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ABSTRACT

The study reviewed the legal relationship between the National Collegiate Athletic Association (NCAA) and its member institutions and the national reform movement in intercollegiate athletics, and proposed legislation that would mandate due process guarantees in all association proceedings with its member institutions. Legal research confirmed that the courts have failed to formulate a precise definition of due process of law. Accordingly, the Florida State Postsecondary Educational Planning Commission, which was charged with conducting the study, focused on issues of fairness. The Commission identified policies and procedures in areas of the NCAA's enforcement process that have resulted in actual or perceived arbitrary practices in the association's interaction with member institutions. The central issue of the study was whether a law should be enacted by the Florida Legislature that would mandate due process guarantees for all NCAA proceedings with Florida's public universities. The Commission did not recommend such legislation, although it did find the enforcement process to be unfair, inconsistent, and arbitrary. The Commission endorsed two recommendations: (1) the Florida Legislature should adopt a resolution that calls for the NCAA to implement substantive reforms to its enforcement program; and (2) following the 1992 NCAA Annual Convention, the Florida Legislature, the Planning Commission, and the Board of Regents should evaluate the association's enforcement program to determine if it provides fair and consistent standards of operation for the state's member institutions. Five appendices making up about half the document include the NCAA statement and responses to commission questions; a list of 32 institutions under NCAA sanctions; a transcript of the NCAA procedures act; a report on the role of faculty in the governance of college athletics; and highlights of legislation adopted at the 1991 NCAA convention. A 24-item bibliography is also included. (GLR)

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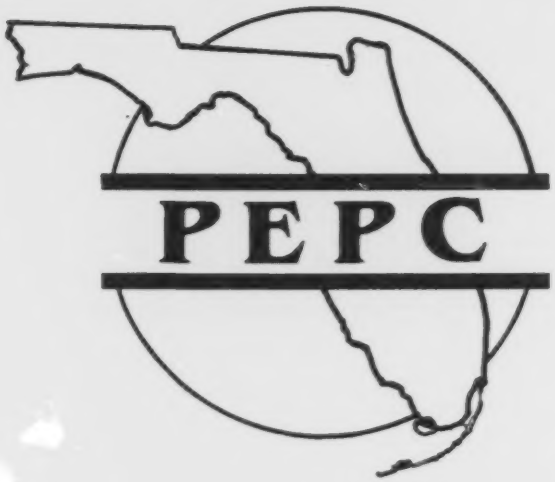

DUE PROCESS IN INTERCOLLEGIATE ATHLETIC ASSOCIATION POLICIES AND PROCEDURES

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Report and Recommendations of the Postsecondary Education Planning Commission

1991 - REPORT 5

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POSTSECONDARY EDUCATIONAL PLANNING COMMISSION

DUE PROCESS IN INTERCOLLEGIATE ATHLETIC ASSOCIATION POLICIES AND PROCEDURES

Prepared in Response to Section 18
of
Chapter 90-365, Laws of Florida

March 20, 1991

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The Postsecondary Education Planning Commission, initially created by executive order in 1980 and subsequently given statutory authority (SS 240.145 and 240.147, Florida Statutes), serves as an advisory body to the State Board of Education on all postsecondary education matters. The Commission is composed of 11 members of the general public and one full-time student registered at a postsecondary education institution in Florida. Members are appointed by the Governor with the approval of three members of the State Board of Education and subject to confirmation by the Senate.

The major responsibility of the Commission is preparing and updating every five years a master plan for postsecondary education. The enabling legislation provides that the Plan "shall include consideration of the promotion of quality, fundamental educational goals, programmatic access, needs for remedial education, regional and state economic development, international education programs, demographic patterns, student demand for programs, needs of particular subgroups of the population, implementation of innovative educational techniques and technology, and the requirements of the labor market. The capacity of existing programs, in both public and independent institutions, to respond to identified needs shall be evaluated and a plan shall be developed to respond efficiently to unmet needs."

Other responsibilities include recommending to the State Board of Education program contracts with independent institutions; advising the State Board regarding the need for and location of new programs, branch campuses and centers of public postsecondary education institutions; reviewing public postsecondary education budget requests for compliance with the State Master Plan; and periodically evaluating the State's 28 regional coordinating councils for vocational education and adult general education.

Further information about the Commission, its publications, meetings and other activities may be obtained from the Commission office, 231 Collins Building, Department of Education, Tallahassee, Florida, 32399-0400; telephone (904) 488-7894.

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TABLE OF CONTENTS

EXECUTIVE SUMMARY.....i

I. INTRODUCTION.....1

II. INTERCOLLEGIATE ATHLETICS IN FLORIDA.....3

III. COLLEGIATE ATHLETIC ASSOCIATIONS.....5

- National Junior College Athletic Association
- Florida Community College Activities Association
- National Association of Intercollegiate Athletics
- National Collegiate Athletic Association
- Summary

IV. JUDICIAL REVIEW OF THE NCAA.....16

- The Voluntary Association
- State Action
- Due Process
- NCAA v. Tarkanian
- Summary

V. STATE LEGISLATION RELATING TO THE NCAA'S ENFORCEMENT PROCESS.....22

- Florida
- Other States

VI. THE REFORM MOVEMENT IN INTERCOLLEGIATE ATHLETICS.....25

- Faculty
- The Presidents' Commission
- Knight Commission on Intercollegiate Athletics
- Southern Association of Colleges and Schools

VII. ISSUES AND RECOMMENDATIONS.....30

- Overview
- The National Collegiate Athletic Association
- Areas of Concern
- Legislation on Collegiate Athletic Associations
- Conclusion

APPENDIX A NCAA Statement and Responses to Commission Questions
APPENDIX B Institutions Under NCAA Sanctions
APPENDIX C Nebraska Collegiate Athletic Association Procedures Act
APPENDIX D The Role of Faculty in the Governance of College Athletics
APPENDIX E 1991 NCAA Annual Convention Legislation

BIBLIOGRAPHY

EXECUTIVE SUMMARY

In Section 18 of Chapter 90-365, Laws of Florida, the 1990 Legislature directed the Postsecondary Education Planning Commission to "examine national and state policy related to collegiate athletic associations in the area of due process with regard to all penalties and proceedings."

To direct this study, Commission Chairman Robert Kerrigan appointed a Planning Committee consisting of Commission members Tully Patrowicz, Chairman, Tom Heath, Robert Mautz, Robert Taylor, and Carolyn Wilson to study due process issues in connection with collegiate athletic associations and submit a report to the full Commission. Seven public meetings were held between August 1990 and March 1991. The Commission focused on the policies and procedures of the National Collegiate Athletic Association (NCAA) due to the severity of sanctions that exist in the association's enforcement program, sanctions that can have far-reaching financial and economic consequences for a member institution. Testimony was received from lawyers, sports journalists, institutional representatives and members of the NCAA enforcement division that discussed the adequacy of due process provisions in regard to proceedings between member institutions and the association.

As part of this study, the Commission reviewed the legal relationship between the NCAA and member institutions, the national reform movement in intercollegiate athletics, and proposed and enacted legislation that would mandate due process guarantees in all association proceedings with member institutions. Legal research and testimony by lawyers confirmed that the courts have failed to formulate a precise definition of due process of law. Accordingly, the Commission has focused on issues of fairness in its review of the NCAA's enforcement procedures.

The Commission identified policies and procedures in the following areas of the NCAA's enforcement process that have resulted in actual or perceived arbitrary practices in the association's interaction with member institutions:

1. The employment criteria and training of NCAA enforcement representatives;
2. The preliminary inquiry;
3. The investigation and the infractions hearing;
4. The Committee on Infractions;
5. Statute of Limitations;
6. Conflict of Interest Policy;
7. The appeals process.

A central issue in this study was whether a law should be enacted by the Florida Legislature that would mandate due process guarantees for all NCAA proceedings with public universities in Florida. At this time, the Commission does not recommend such legislation, although it found that the association's enforcement process has been arbitrary and is not as fair and consistent as it should be. Instead, the Commission offers a course of action to the legislature to call attention to its concerns and to strongly urge the association to reform its

enforcement procedures. A formal resolution from the Florida Legislature will send a clear message to the association leadership that Florida is concerned about the NCAA's exclusive control of intercollegiate athletics and, more specifically, about the potential for unfair or arbitrary treatment of member institutions in certain aspects of the enforcement process, as identified in this report.

At the 1992 NCAA Annual Convention, enforcement policies and procedures that cannot be soundly defended as fair and consistent standards of operation should be modified by the association membership. Vigorous support for reform will be needed at the convention by State University System presidents and faculty athletic representatives. Following the convention, enacted reforms will need to be evaluated to determine whether they adequately provide fair and consistent standards of operation for the State's member institutions. The Commission endorses the following two recommendations:

Recommendations:

1. The Florida Legislature should adopt a Resolution that calls for the National Collegiate Athletic Association to enact substantive reforms to its enforcement program which will address the following concerns identified by the Commission:

   A. the employment criteria and training of NCAA enforcement representatives;

   B. the covert nature of the preliminary inquiry of allegations by the enforcement staff;

   C. the use of summaries of witness statements as substantive evidence;

   D. the composition and functioning of the Committee On Infractions;

   E. the length of time from the initial complaint of rule violations to the resolution of the charges;

   F. the adequacy of the association's conflict of interest policies;

   G. the NCAA's appeals process that includes the possibility of additional sanctions resulting from the appeal.

2. Following the 1992 NCAA Annual Convention, the Florida Legislature, the Postsecondary Education Planning Commission and the Board of Regents should evaluate the specific reforms to the association's enforcement program to determine if they adequately provide fair and consistent standards of operation for the State's member institutions.

I. INTRODUCTION

Section 18 of Chapter 90-365, Laws of Florida, enacted by the 1990 Legislature directed the Postsecondary Education Planning Commission to "examine national and state policy related to collegiate athletic associations in the area of due process with regard to all penalties and proceedings."

As intercollegiate athletics programs have increasingly become big businesses capable of generating tremendous revenue, the programs have become crucial to the economic health and stability of many postsecondary institutions. Some universities have realized enormous revenue from their football and basketball programs, and the pressures to win in order to earn more income for the institution has led to an alarming frequency of violations of the rules of the National Collegiate Athletic Association (NCAA), the primary governing body of intercollegiate athletics. National media regularly include reports of recruiting violations, illegal payments, cheating, and the enrollment of athletes who are academically unqualified and/or underprepared. The rise in scandals in sports programs at some of the most successful academic as well as athletic institutions has eroded public confidence in colleges and universities and has heightened the call for reform by all levels of the higher education community. In addition, coaches and athletic directors who are members of the NCAA, institution presidents, faculty, and legislators have become active in recommending reforms to the system. Recent reform proposals attempt to tighten controls over athletic programs and address, among other things, cost reduction, restructuring, and time demands on student-athletes.

In Florida, colleges and universities belong to one of three collegiate athletic associations: the National Junior College Athletic Association (NJCAA), the National Association of Intercollegiate Athletics (NAIA), or the National Collegiate Athletic Association (NCAA). Seven of the nine public universities are members of the NCAA, and two universities--the University of West Florida and the University of North Florida--are members of the NAIA.

The NCAA is the major governing body for college athletics in the United States and represents over 1000 colleges and universities. Although the NCAA is a voluntary association, only member institutions can participate in NCAA-sanctioned activities and events. The NCAA enacts, interprets and enforces its own policies, determines rule violations and assesses penalties. Presently, the NCAA is the sole interpreter of its bylaws. The association's enforcement process includes a broad array of sanctions, some of which can have far-reaching financial and economic consequences for a member institution. The imposition of severe sanctions by the NCAA has caused increased scrutiny of the association's enforcement procedures by athletic administrators, alumni, institution presidents, and legislators.

In addition to the stigma attached to investigation by the NCAA or the NAIA for possible rule infractions, when an institution receives a probationary sanction from its national association for specific violations, the institution's image both in the higher education community and nationally may be tarnished for years. Moreover, in many instances, penalties levied by the NCAA have caused significant financial damage to the affected athletic department due to the loss of regular season television funds and revenue from postsecondary competition. Additionally, when the football or basketball programs are penalized, other sports, such as tennis, golf, swimming, wrestling, and all women's programs, suffer as well because of the overall reductions in revenue available to the athletic

department. Such losses can be devastating to an athletic department that is self-supporting and derives its income mainly from the revenues of football and basketball programs. Concern regarding the economic impact of severe sanctions was heightened in recent years when the NCAA empowered itself to impose the "death penalty" on colleges that commit and/or repeat major rule violations.

National interest in college sports issues has been accompanied by increasing activity in state legislatures and in the U.S. Congress. The U.S. Supreme Court ruling in NCAA v. Tarkanian (1988) has sparked measures by a number of state legislatures, as well as the U.S. Congress, to address the need for due process of law in all proceedings with the collegiate athletic associations by the enactment of standards for the investigation of public institutions by collegiate associations, particularly the NCAA.

II. INTERCOLLEGIATE ATHLETICS IN FLORIDA

Florida public colleges and universities provide and support a variety of intercollegiate athletic competition at the national, regional, and state level. Seven of the nine state universities are members of the National Collegiate Athletic Association (NCAA) and two universities are members of the National Association of Intercollegiate Athletics (NAIA) (Table 1). All of the 28 public community colleges are members of the National Junior College Athletic Association (NJCAA).

Each of the nine universities has a campus athletics council consisting of faculty, students, and administrators, that advises the institution president on all athletic matters, particularly in the areas of academics and finance. The councils review and recommend policies relating to admissions and standards, academic support for student-athletes, and long range plans and objectives. A number of universities have added staff to coordinate academic advising and tutoring for student-athletes, as well as compliance with national athletic association policies and procedures.

In 1987, the Board of Regents established the policy and format for the reporting of data concerning the admission, retention, and graduation of State University System student-athletes participating in intercollegiate competition. As a result, each university has committed significant resources to improving the retention and graduation rates of its student-athletes. According to the Regents' **Annual Report on the Academic Performance of Athletes for Academic Year 1989-90**, the system-wide five year graduation rate for all recruited student-athletes in the 1984-85 cohort was 36.6 percent, only 2.3 percentage points lower than the rate of 39.1 percent achieved by all freshmen. The report states that the gap between the graduation rates of all freshmen and the rates of all student-athletes has narrowed in each of the past three years, but most of the narrowing is due to a decline in the graduation rate of all freshmen. Further, the graduation rates of recruited student-athletes in the major sports of baseball, basketball, and football (for the 1984-85 cohort 29.9 percent, 24 percent and 30.9 percent, respectively) have remained somewhat lower than the graduation rates of all freshmen in their cohorts.

In early 1991, the Board of Regents initiated a State University System intercollegiate athletics program review self study to review each athletic program in relationship to its university and to the SUS as a whole. Major program issues will include: 1) mission of the athletics program, 2) presidential control, 3) financial accountability, 4) direct support organizations, 5) compliance, 6) the student-athlete, 7) internal management, 8) the athletics council, 9) equity, 10) a five-year plan, and 11) responses to 1986 program review recommendations. The review will include site visits by outside consultant teams and will be observed by representatives of the NCAA.

The athletic directors and faculty athletic representatives of the nine state universities were given an opportunity to provide input to the Commission on the due process issues of this study. Six of the nine universities responded to the inquiry, and a number of institution representatives identified concerns with the NCAA's enforcement procedures. One representative was supportive of a state law that would guarantee for a public university due process in all proceedings with its affiliated national athletic association.

TABLE 1

STATE UNIVERSITY SYSTEM

INTERCOLLEGIATE ATHLETICS AFFILIATIONS AND PROGRAMS
As of October 1, 1990

	Athletic Assoc.	Division	Conference	Men's Sports	Women's Sports
UF	NCAA	I-A	SEC	Baseball Basketball Cross Country Football Golf Swimming/Diving Tennis Track/Field	Basketball Cross Country Golf Gymnastics Swimming/Diving Tennis Track/Field Volleyball
FSU	NCAA	I-A	METRO (until 7/1/91) ACC (on 7/1/91)	Baseball Basketball Cross Country Football Golf Swimming/Diving Tennis Track/Field	Basketball Cross Country Golf Softball Swimming/Diving Tennis Track/Field Volleyball
FAMU	NCAA	DIV I I-AA Football	MEAC New South Women's Athl. Conf.	Baseball Basketball Cross Country Football Golf Swimming/Diving Tennis Track/Field	Basketball Cross Country Softball Swimming/Diving Tennis Track/Field Volleyball
USF	NCAA	I-AAA	Sun Belt	Baseball Basketball Cross Country Golf Soccer Tennis	Basketball Cross Country Golf Softball Tennis Volleyball
FAU	NCAA	DIV II	Independent	Baseball Basketball Golf Soccer Tennis	Basketball Swimming/Diving Tennis Volleyball
UWF	NAIA		Independent	Baseball Cross Country Golf Tennis Soccer	Basketball Cross Country Softball Tennis
UCF	NCAA	DIV I	Independent	Baseball Basketball Cross Country Football Golf Soccer Tennis	Basketball Cross Country Golf Soccer Tennis Volleyball
FIU	NCAA	I-AAA	Trans American Athletic Conf. New South Women's Athl. Conf.	Baseball Basketball Cross Country Golf Soccer Tennis	Basketball Cross Country Golf Soccer Tennis Volleyball
UNF	NAIA		Independent	Baseball Cross Country Golf Tennis Track	Cross Country Tennis Track

Source: Board of Regents

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III. COLLEGIATE ATHLETIC ASSOCIATIONS

National Junior College Athletic Association

The National Junior College Athletic Association (NJCAA) was founded in 1938 by a small number of representatives of California junior colleges. Their goal was to create an association that would promote and supervise a national program of junior college sports and activities consistent with the educational objectives of junior colleges. By 1970, the membership had expanded to 476 institutions, and national championships were conducted in most team sports. In 1976, the NJCAA reorganized and added a women's division, and national championships for women were approved in volleyball, basketball, and tennis. In 1983, the number of regions in the nation were expanded to 24. The association's Board of Directors is made up of the regional directors of each of the 24 regions.

In 1989, there were 529 member institutions in th men's division, including 25 members in Florida (Region VIII). Florida NJCAA i stitutions competed in 10 male sports, mainly basketball, baseball, and golf. There were 455 member institutions in the women's division, including 24 members in Florida. Florida NJCAA institutions competed in nine female sports, mainly basketball, softball, tennis, and volleyball. The 1990 Legislature appropriated funds to support athletic programs at Florida Keys Community College, Okaloosa-Walton Community College, Pasco-Hernando Community College, and Tallahassee Community College. As a result, all 28 colleges are now members of the NJCAA.

In 1989, the NJCAA adopted a national letter of intent for student-athletes and scholarship agreement/policies and procedures for member colleges. To participate in NJCAA-sponsored competition, a student must be a high school graduate, or received a high school equivalency diploma, or certified as having passed the General Education Development Test (GED). To maintain eligibility, a student must maintain enrollment in 12 or more credit hours of college work, must be in regular attendance within 15 calendar days from the beginning of the term in which he/she will participate, and must be making satisfactory progress within an approved college program or course. Prior to the second full-time term (quarter or semester), a student must have passed 12 hours with a 1.75 grade point average or higher. In Florida, the student must have a 2.00 grade point average for all terms following the initial term.

Enforcement

Each regional director is responsible for certifying to the NJCAA Office of Eligibility the academic eligibility of all student-athletes who participate in NJCAA competition. Each college is required to submit to its regional director a completed NJCAA eligibility form for each of the NJCAA certified sports that the college sponsors as a varsity sport. In addition, regional directors investigate and notify the national office of matters pertaining to possible violations of the association's rules and regulations by member colleges or individuals associated with member colleges within their region. Information is forwarded to the NCJAA Eligibility Administrator in the association's national office, who renders decisions on all eligibility questions to the appropriate regional director.

A member college that uses an ineligible student will be required to forfeit all contests in which the ineligible student participated. The maximum penalty that the Office of Eligibility may impose is probation from participation in regional

or national NJCAA-sponsored competition for one calendar year. Member colleges may appeal a decision to the National Executive Committee, through either a written presentation or an oral hearing before the Committee. Prior to a hearing, the association by-laws state that 20 days prior to a hearing the appealing college must submit to the national office written factual allegations concerning its defense. Ten days thereafter, the national office must submit to the college written factual allegations in support of its decision. All proceedings before the Executive Committee are transcribed by a certified court reporter, and costs are shared equally by the parties involved. Any member college may appeal the decision of the Executive Committee to the American Arbitration Association for a resolution according to the association's rules and procedures.

Florida Community College Activities Association

The Florida Community College Activities Association (FCCAA) is a statewide non-profit corporation regulating, coordinating, and promoting intercollegiate activities in music, theatre, forensics, athletics, visual arts, student publications, student government, and the Brain Bowl. Within the FCCAA, the Council for Athletic Affairs establishes sports policies and coordinates athletic competition within the State. Each sport that is approved by the FCCAA for state competition has a state committee to formulate policy to regulate that sport.

Within the FCCAA, there is an Athletic Commissioner for men's sports and an Athletic Commissioner for women's sports. The commissioners are elected to two-year terms from the state's community college athletic directors. In Florida, the Athletic Commissioners serve as NJCAA Region VIII Directors and serve as the official liaison between the NJCAA and the FCCAA. The Athletic Commissioners render decisions concerning FCCAA eligibility rules. A college may appeal the decision to an Athletic Eligibility Appeals Committee, which consists of state conference chairmen and an Athletic Commissioner who was not involved in the decision being appealed. Following a hearing, the Committee's decision is final and may not be appealed.

National Association of Intercollegiate Athletics

The National Association of Intercollegiate Athletics (NAIA) was founded in 1940 and was developed out of a national basketball tournament conducted annually by the National Association of Intercollegiate Basketball. The tournament was established by James Naismith and others in Kansas City to provide a method for small colleges and universities to determine a national champion. The association's voluntary membership has continued to expand to its current membership of 478 accredited colleges and universities throughout the United States and Canada, which represents nearly 40 percent of all four-year, U.S. institutions. Championships are conducted in 12 male and nine female sports.

The purpose of the NAIA, according to the association's official handbook, is "to promote the education and development of students through intercollegiate athletic participation. Member institutions, although varied and diverse, share a common commitment to high standards and the principle that athletics serve as an integral part of education." According to the NAIA, the association has been structured by design to operate under an educational model rather than a business model and to emphasize the educational thrust of athletics. Athletic programs are funded by the institution as are all other departments and, more often than not, operate at a financial loss. The foundation of the association is a Code

of Ethics and a Coaches Code, which consists of 18 standards that focus on honesty and integrity.

The basic structure of the NAIA consists of 32 geographic districts and eight administrative areas, with each district having a District Chairman and a District Eligibility Committee. Member institutions in Florida have been assigned to District 25, which includes the states of Georgia and Florida. Due to the continued growth of membership, beginning in August 1991 the states of Georgia and Florida will be divided into separate districts. The following Florida institutions are currently NAIA members: College of Boca Raton, Brewton Parker College, Edward Waters College, Embry-Riddle Aeronautical University, Flagler College, Florida Memorial College, University of North Florida, Northwood Institute, Nova University, Palm Beach Atlantic College, St. Thomas University, Warner Southern College, Webber College, and the University of West Florida.

The NAIA encourages a "grass roots" level of participation by member institutions, and most administrative matters, including eligibility and policy enforcement issues, are initially handled at the district level. Following a recently adopted restructuring of the association's governance, the Council of Presidents has become the governing body of the NAIA. The Council of Presidents is comprised of one representative from each district. The administrative authority of the association is vested in the newly-established National Coordinating Committee, which is a representative body elected by the membership of the NAIA at its annual meeting. Included in the National Coordinating Committee's authority is the monitoring of competition and eligibility requirements and the enforcement of institutional penalties. The association also adopted a three-tier panel of institution officials to supervise various athletic program areas. Athletic administrators are responsible for policies related to national competition, while faculty representatives prescribe academic standards, and various chairpersons of the association's 32 districts establish regional competition rules.

Like many larger colleges and universities, NAIA institutions remain concerned about the growing public dissatisfaction over the lack of academic integrity in intercollegiate athletics. Member institutions argue that much of the negative image can be traced to the passage of Proposition 48 in 1983 by the NCAA. Proposition 48 established minimum standards for freshman eligibility and led to widespread misconception that the NAIA institutions were academically inferior to institutions in the NCAA. Although the NAIA had maintained stricter academic progress standards than the NCAA, the belief that athletes who did not meet Prop 48 standards could transfer to "less stringent" NAIA institutions persisted. Consequently, the NAIA attempted to bolster its image by implementing stricter entrance and academic progress requirements. Entrance requirements for NAIA institutions include: (1) a score of 18 on the ACT or 700 on the SAT, (2) a 2.0 grade point average on a 4.0 scale, and (3) graduating in the top one-half of the senior class. Entering freshmen must meet two of the three requirements to participate in NAIA athletic programs.

Enforcement

The NAIA has no enforcement division within its association. In a "grass roots" enforcement process, each NAIA institution monitors its own athletic program and responds initially to inquiries regarding the eligibility of its student-athletes. Each institution is also encouraged to monitor the athletic programs of other institutions in its district. The association focuses its activities

on the administration of member institution's athletic programs and competition, and the vast majority of the association's rules and regulations center on ensuring that student-athletes progress toward a degree. According to the NAIA, over 90 percent of violations of association policies deal with issues of academic eligibility. Over 98 percent of all eligibility cases processed by the association are self-reported and self-enforced.

Academic Eligibility

Each district chairman is primarily responsible for the certification of academic eligibility. Each semester, the district chairman works with the athletic director at each institution to verify the academic eligibility of every athlete. Each semester, the Faculty Athletics Representative of each member institution must complete a NAIA Official Eligibility Certificate for every athlete. The process certifies that the athlete has maintained a 2.0 grade point average and is a full-time, enrolled student. Each certificate is signed by the registrar, athletics director, coach, and faculty athletics representative. Allegations of eligibility violations are forwarded to the District Eligibility Chairman, who will investigate the case and will solicit information from the President of the institution, who will, in turn, respond with a written report of the allegations. The District Eligibility Chairman will forward the information to the National Eligibility Committee for appropriate action. The institution may appeal the decision of this Committee to the Council of Presidents.

Infractions and Penalties

Each institution within a district is responsible for reporting any violations to the District Chairman and District Executive Committee. Typically, allegations of rule violations are initially investigated by the District Chairman. All information is sent to the chairman, and he/she determines whether a violation has occurred. If the chairman believes that a violation has occurred, the chairman and the District Committee investigate the charges and solicit information on the allegations from the Chief Executive Officer (CEO) of the institution. Typically, the CEO will initiate and coordinate an investigation of the charges and submit a written report to the National Committee. The Conduct Committee forwards a recommendation to the National Coordinating Committee for action. If warranted, the National Coordinating Committee determines sanctions for the involved institution. The institution has the opportunity to appeal sanctions to the Council of Presidents. According to the NAIA Handbook, "all current rights to appear and/or provide testimony/evidence remain for the institution under investigation in both the original and appeal process."

The NAIA's National Eligibility Committee has recently taken its strongest stance against a member institution for rule violations. Citing the most numerous and severe eligibility violations in the association's history, the NAIA imposed a two-year ban from playing football to the University of Arkansas at Pine Bluff. The sanctions mark the first time that the NAIA has banned an institution from playing a sport, although the association has occasionally revoked colleges' memberships or barred them from postseason play. The Committee found that the football program had violated NAIA rules 41 times. Most of the violations involved athletes who either had been incorrectly certified as eligible to play, or had not been certified at all. The university acknowledged rule violations but appealed the sanctions to the NAIA's National Coordinating Committee, saying that they were too harsh and that the NAIA had failed to provide due process to

the university. The Committee, the final appeals body of the association, upheld the penalties but reduced the two-year ban to one year.

National Collegiate Athletic Association

The National Collegiate Athletic Association (NCAA) is a voluntary association of more than 1000 institutions, conferences, organizations, and individuals through which major colleges and universities in the U.S. speak and act on athletic matters at the national level. The association employs a national office staff of 180. Through this organization, member institutions are able to consider and act upon any athletic problem that has crossed regional or conference lines and has become national in character. In addition, the NCAA provides the organization, structure, and rules for intercollegiate participation and competition among the member institutions. Since its inception, the NCAA has worked to maintain intercollegiate athletics as an integral part of the educational program of the institution and the athlete as an integral part of the student body to "retain a clear line of demarcation between college athletics and professional sports."

History

The NCAA was created in 1905 in response to the increasingly violent character of intercollegiate football. Due to a series of serious injuries and deaths, a number of institutions discontinued football, while others urged that the sport either be reformed or abolished. At the urging of President Theodore Roosevelt, a series of meetings with college athletic leaders convened in 1905 to initiate football rules changes. These meetings resulted in formation of a 62 member Intercollegiate Athletic Association of the United States (IAAUS). The IAAUS was initially organized primarily as a rule-making body, formulating guidelines for major collegiate sports. The organization changed its name to the National Collegiate Athletic Association in 1910, and early meetings consisted of efforts to define eligibility for college athletics and develop common rules for conducting games and competition.

Following World War II, member institutions were increasingly concerned about abuses involving student-athletes in recruiting and financial aid, and the effects of unrestricted television on football attendance, and attempted to adopt additional controls over these problems. The postwar boom brought a series of gambling scandals in the NCAA, including unethical recruiting practices, point-shaving, payoffs to student-athletes, altered grades and eligibility violations. In 1946, the NCAA adopted specific guidelines, known as the Sanity Code, to set standards for the recruiting and compensating of student-athletes. The guidelines also clarified that all members should be prepared to abide by the principles or lose their NCAA membership. Following a series of gambling scandals in the early 1950s, however, the Sanity Code was abandoned.

Due to the growth in membership and organized championships, the association appointed a full-time executive director in 1951 and established a national headquarters in Kansas City in 1952. A program to control live television of football games was approved, and the annual Convention delegated enforcement powers to the association's Council and adopted legislation governing postseason bowl games. Incidents of flagrant violations of NCAA rules continued in the 1950s and 1960s, especially in the areas of recruiting, financial compensation to players, and academic credentials.

The association's membership was divided into three legislative and competitive divisions in 1973 at the first special Convention ever held. Five years later, Division I members voted to create subdivisions I-A and I-AA in the sport of football. Women joined the NCAA's activities in 1980 when Divisions II and III established 10 championships for 1981-82. A year later, the NCAA Convention adopted an extensive governance plan to include women's athletic programs, services, and representation. The delegates expanded the women's championships program with the addition of 19 additional events.

The President's Commission was created in 1984, and the following year the membership took decisive actions to strengthen the association's compliance and enforcement efforts. In 1987, the NCAA launched an 18-month National Forum on critical questions regarding intercollegiate athletics. In subsequent annual NCAA conventions, the President's Commission has become increasingly active in proposing reforms to the association's policies and procedures to better define the role of intercollegiate athletics in higher education.

Membership

As illustrated in Table 2, the NCAA has grown dramatically in the past 40 years, with more than 600 new members since 1950.

TABLE 2

YEAR	TOTAL MEMBERS	YEAR	TOTAL MEMBERS
1950	387	1975	824
1955	489	1980	880
1960	582	1985	987
1965	659	1987	1,002
1970	747	1989	1,018

Source: NCAA

The membership consists of all sizes and types of institutions, from the largest state universities to small private and church-related colleges. There are more than 500 members that do not compete in major-college level athletics. Any college or university may be elected to active membership according to the following guidelines:

- is accredited by the recognized accrediting agency of its region;
- maintains at least four intercollegiate sports for men and four for women (one in each of the traditional seasons), unless the institution conducts athletics programs for only one sex;
- complies with all NCAA legislation dealing with financial aid, recruiting, playing seasons, postseason competition, and other areas of administration, and agrees to cooperate fully with the NCAA enforcement program and to respect penalties imposed by that program.

Active members determine which of the three membership divisions is most appropriate for their programs, based on their ability to meet criteria established by the divisions. Generally, the differences in classifications include sports sponsorship minimum criteria, football and basketball scheduling requirements, academic and eligibility standards, and financial aid limitations. In addition, Division I-A members are required to meet minimum paid football attendance criteria.

Eligibility Standards for Student-Athletes

Eligibility requirements for entering freshman include a minimum cumulative grade point average (GPA) of 2.0 and successful completion of a core curriculum in the following areas: 1) English, 2) math, 3) the social sciences, and natural or physical science. A minimum score of 700 on the SAT or 18 on the ACT is also required.

Academic progress standards for student-athletes having completed one year of competition include maintaining a minimum grade point average specified by individual institutions in Division One. Division Two institutions require that student-athletes maintain satisfactory progress standards of 1.6 GPA after the first season; 1.8 GPA after the second; and a 2.0 GPA thereafter. NCAA rules require that all student-athletes declare a degree program or major at the beginning of the third year of enrollment.

Organization

The final authority and governing body of the NCAA is its annual convention held every January. Each active and qualified conference member holds one vote on convention issues. The 46-member NCAA Council establishes and directs the association's policy between conventions. Members include the president and secretary-treasurer, 22 Division I representatives, and 11 each from Divisions II and III. All are elected by the membership at the annual convention. The Council acts as a single body to deal with overall policy and interests that involve all divisions. In addition, there are steering committees, which consider and act upon matters relating only to their divisions.

The NCAA Executive Committee, which includes the president, secretary-treasurer, and three division vice-presidents among its 14 members, transacts NCAA financial matters and oversees its championships. Forty-four chief executive officers, 22 from Division I, and 11 each from Divisions II and III, constitute the NCAA President's Commission. The Commission regularly reviews association activities, studies major intercollegiate athletics issues, and recommends actions on those issues. The Commission has the authority to propose legislation directly to an NCAA Convention and to direct roll-call votes.

Committees form the core of the association. They develop policy by channeling reports and recommendations through the Council, steering committees, or Executive Committee to the annual convention. There are now 23 general committees, six convention committees, eight sports committees with rule-making and championship responsibilities, 28 sports committees with tournament responsibilities only, and six separate rules committees. Most NCAA committees have specified representation from each of the three divisions, as well as certain district or geographical requirements.

Enforcement

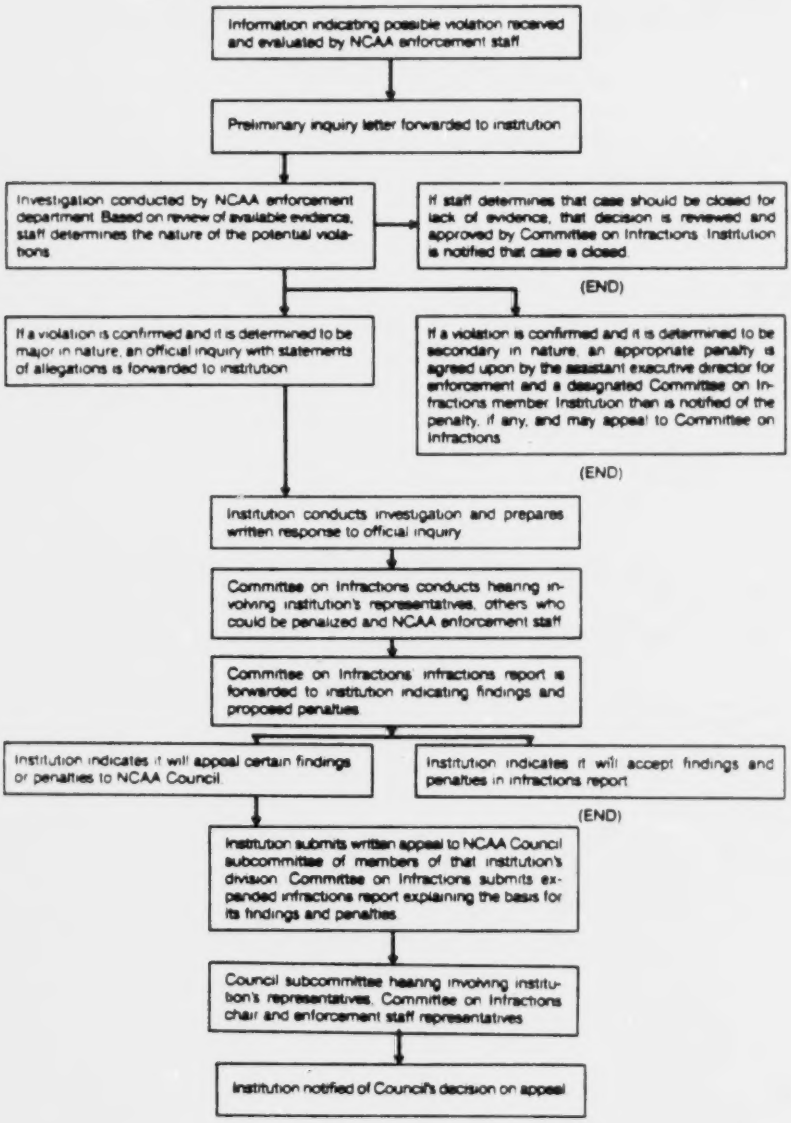
In 1952, the NCAA replaced its ineffective Sanity Code, instituted a new set of enforcement procedures, and created a Committee on Infractions. The Committee on Infractions was given additional authority to penalize members involved in rule violations. For the next two decades, the committee directed the investigations of alleged wrongdoers, analyzed evidence, held hearings, reported findings, and recommended disciplinary action to the NCAA Council for final resolution of charges against the member institution.

An increasing number of complaints in the early 1970s from member institutions accused the Committee of unfair procedures and favoritism and focused on the Committee's involvement in the entire investigative and adjudicatory process. As a result of this criticism, the NCAA approved the establishment of a separate investigative staff to conduct investigations of all alleged rule violations.

The NCAA Enforcement Division now is primarily involved in reviewing the athletic programs of member institutions when there is evidence of infractions of association policies and/or procedures, particularly violations in recruiting practices, financial compensation of student-athletes, and academic records. The processing of an infractions case is displayed in Figure 1. Answers to questions on the enforcement process submitted to the NCAA by the Commission, along with a written statement prepared by the NCAA Enforcement Division, appear in Appendix A.

FIGURE 1

PROCESSING OF A TYPICAL NCAA INFRACTIONS CASE


Information indicating possible violation received and evaluated by NCAA enforcement staff
Preliminary inquiry letter forwarded to institution
Investigation conducted by NCAA enforcement department. Based on review of available evidence, staff determines the nature of the potential violations
If staff determines that case should be closed for lack of evidence, that decision is reviewed and approved by Committee on Infractions. Institution is notified that case is closed.
(END)
If a violation is confirmed and it is determined to be major in nature, an official inquiry with statements of allegations is forwarded to institution.
If a violation is confirmed and it is determined to be secondary in nature, an appropriate penalty is agreed upon by the assistant executive director for enforcement and a designated Committee on Infractions member. Institution then is notified of the penalty, if any, and may appeal to Committee on Infractions.
(END)
Institution conducts investigation and prepares written response to official inquiry.
Committee on Infractions conducts hearing involving institution's representatives, others who could be penalized and NCAA enforcement staff.
Committee on Infractions' infractions report is forwarded to institution indicating findings and proposed penalties.
Institution indicates it will appeal certain findings or penalties to NCAA Council.
Institution indicates it will accept findings and penalties in infractions report.
(END)
Institution submits written appeal to NCAA Council subcommittee of members of that institution's division. Committee on Infractions submits expanded infractions report explaining the basis for its findings and penalties.
Council subcommittee hearing involving institution's representatives, Committee on Infractions chair and enforcement staff representatives.
Institution notified of Council's decision on appeal.

SOURCE: 1990-91 NCAA Manual.

Allegations of rule violations are referred to the association's investigative staff. A preliminary investigation is initiated to determine if an official inquiry is warranted and whether a secondary or major violation has occurred. The institution involved is notified promptly and may appear in its own behalf before the NCAA Committee on Infractions.

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Findings of the Committee on Infractions and the resultant penalty in major cases are reported to the institution, which may appeal the findings or penalty to the NCAA Council. Among the sanctions that the Committee may impose against an institution are:

1. Reprimand and censure;
2. Probation for one year;
3. Probation for more than one year;
4. Ineligibility for one or more National Collegiate Championship events;
5. Ineligibility for invitational and postseason meets and tournaments;
6. Ineligibility for any television programs subject to the association's control or administration;
7. Ineligibility of the member to vote or its personnel to serve on committees of the association, or both;
8. Prohibition against an intercollegiate sports team or teams participating against outside competition for a specified period;
9. Prohibition against the recruitment of prospective student-athletes for a sport or sports for a specified period.

Additionally, in 1985 the NCAA approved legislation that stipulated that members who violate association rules within five years of the starting date of a major penalty be declared repeat violators. Repeat violators are automatically subject to severe penalties, which could include prohibition from participating or recruiting in the sport for up to two years, removal of NCAA officials representing the school, or the forfeit of NCAA voting privileges for four years. The severity of these penalties for the repeat offender has led to the nickname, the "death penalty."

The "death penalty" rule was used for the first time when the NCAA determined sanctions for the Southern Methodist University football team in 1986. The program had been placed on probation in 1985 and had been found guilty of seven rule violations since 1958. The Committee on Infractions suspended the football program for one year and placed the program on probation through 1990. The Committee's report stated that the "penalties are intended to eliminate a program that was built on a legacy of wrongdoing, deceit, and rule violations."

An institution may appeal a sanction to the NCAA Council through submission of a written notice of appeal, within 15 days of receipt of the Infractions Committee report, that challenges the Committee's findings of fact or the penalties imposed. When an appeal is requested, the Infractions Committee submits an expanded infractions report to the Council on the case. After considering written reports and oral presentations by representatives of the Committee on Infractions and the institution, the Council acts on the appeal.

According to the NCAA Manual, the findings of the Infractions Committee will be upheld unless the appealing institution can demonstrate that:

(a) The committee's finding clearly is contrary to the evidence presented to the committee,

(b) The facts found by the committee do not constitute a violation of the association's rules, or

(c) A procedural error affected the reliability of the information that was utilized to support the committee's findings.

Council action may include accepting the Committee's findings and penalty, altering either, or making its own findings and imposing an appropriate penalty. Member institutions who are currently under NCAA sanctions appear in Appendix B.

Summary

The NCAA is the primary governmental body for intercollegiate athletics. Through the representatives of its member institutions, it promulgates regulations for the conduct of intercollegiate athletics; it investigates and prosecutes alleged violations of its regulations; and it determines whether an investigated institution has violated the regulations. Thus, the NCAA is a hybrid of legislative, executive, and judicial bodies. Policies and procedures of all three of these association functions, however, have been challenged in the courts by member institutions, coaches, and/or student-athletes.

IV. JUDICIAL REVIEW OF THE NCAA

In the past two decades, postsecondary institutions have become involved in legal disputes with athletic conferences or collegiate athletic associations over their rules, policies, or decisions. Additionally, student-athletes penalized for violating conference or association rules have sued both the conference or association and the institution over the enforcement of these rules. The bulk of such disputes have involved the National Collegiate Athletic Association (NCAA), the primary regulator of intercollegiate athletics in the U.S. These disputes have tended to be brought to the courts with decisions based upon constitutional principles, and much of the litigation has been centered on challenges to the NCAA's level of control of intercollegiate athletics. This chapter reviews legal principles that have been applied to these disputes and summarizes court cases that provide definition to the legal relationship between the NCAA and its member institutions.

The Voluntary Association

The term "association" does not have a fixed meaning but is generally used to indicate a collection of individuals or groups who have united or joined together for some special purpose or common business objective(s). An association exists for its membership, and the association's rules, standards, and operating procedures are developed and approved by its membership. According to **American Jurisprudence:**

> A voluntary association may, without direction or interference by the courts, establish its government and adopt rules, regulations, and bylaws which will be controlling as to all questions of discipline, doctrine or internal policy; and its right to interpret and administer such rules and regulations is as sacred as its right to make them.

The rules and bylaws of an unincorporated association constitute a contract between the members.

States may recognize by statute the separate existence of an association for certain purposes, as where there are statutes or rules of procedures providing that an association may sue or be sued. In states that do not regulate associations, such organizations operate under the general law of the land.

Traditionally, courts have given private voluntary associations great latitude in regulating their own internal affairs, free from judicial intervention. In such decisions, the primary rationale continues to be that association's members join voluntarily and thereby willingly submit to the association's authority. The courts, using principles of common law, have required the NCAA and other conferences and associations to adhere to their own rules and procedures, fairly and in good faith, in their relations with their member institutions.

The case of the Trustees of the State Colleges and Universities v. NCAA was initiated in 1978 after the NCAA had declared a California state university's athletic teams indefinitely ineligible for postseason play. The university argued that the NCAA's decision was contrary to the NCAA's own constitution and bylaws. The lower court issued a permanent injunction against the NCAA. The court of appeals affirmed, reasoning that the relationship between the NCAA as a voluntary association and the university as a member, was one of contract,

evidenced by the constitution and bylaws of the NCAA. In this case, the court intervened in a private association's internal affairs to nullify substantial disciplinary action taken against a member in violation of the association's constitution and bylaws.

During the 1970s and 1980s, numerous state courts found NCAA action to be taken under color of state law but have upheld association procedures in regard to its members. The legal status of the NCAA as a voluntary association, however, was recently upheld by the U.S. Supreme Court. See subsequent discussion of NCAA v. Tarkanian.

State Action

In litigation involving the NCAA, courts have been asked to review the authority and the rule-making activities of the association in relation to established legal principles that define the origin and scope of authority of public versus private institutions. The Fourteenth Amendment to the U.S. Constitution forbids states to use their governmental powers for discriminatory purposes where there is state participation through any arrangement, management, funds, or property.

In a number of legal cases in the 1970s, the courts held that the NCAA, as the overseer of all intercollegiate athletics, had sufficient contacts with state government(s) and performed enough of a public function to be subject to constitutional requirements. Accordingly, the NCAA was found to be engaged in "state action" and thus was subject to the due process and equal protection constraints of the U.S. Constitution.

In McDonald v. NCAA (1974), the Supreme Court affirmed that "conduct that is formally 'private' may become so entwined with governmental policies or so impregnated with a governmental character as to become subject to constitutional limitations placed upon state action." In this regard, the Court found that public members that compose over one-half of the NCAA all pay state funds to the NCAA in the form of annual dues, and, through their state-supported colleges and universities, states may influence and direct the NCAA. The Court concluded that the elements of financial support and of the exercise of a public function through governmental delegation and control are both present in the operation of the NCAA.

In Parish v. NCAA (1975), the Court rejected the NCAA's argument that it is a private association not subject to the Constitution. It stated:

> Suffice it to say that state-supported educational institutions and their members and officers play a substantial, although admittedly not pervasive, role in the NCAA's program....Organized athletics play a large role in higher education, and improved means of transportation have made it possible for any college, no matter what its location, to compete athletically with other colleges throughout the country. Hence, meaningful regulation of this aspect of education is now beyond the effective reach of any one state. In a real sense, then, the NCAA by taking upon itself the role of coordinator and overseer of college athletics--in the interest both of the individual student and the institution he attends--is performing a traditional governmental function.

Having found the NCAA to be engaged in state action, the Court proceeded to examine the NCAA's role under due process and equal protection principles. The determination of state action in NCAA activities was reversed in NCAA v. Tarkanian (1988), the central court case in this study.

Due Process

One of the central themes in numerous NCAA cases, particularly in cases initiated by student-athletes, has been the basic constitutional requirements of substantive due process of law. The principles are drawn from the Due Process Clauses of the Fifth and Fourteenth Amendments, which were designed to prevent public bodies from conducting themselves in an arbitrary, capricious, and unreasonable manner. Irrespective of the fact that no exact definition of due process has been agreed upon, it remains a fundamental basis of democratic government.

The Fourteenth Amendment to the United States Constitution, adopted in 1868, has been the primary basis for adjudication relating to the rights of U.S. citizens. Section I of this amendment is the section most frequently referred to by the courts:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, of property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

It is this section of the Fourteenth Amendment upon which numerous court decisions have been based that affect, either directly or indirectly, the operations of educational institutions and the rights of both its students and faculty.

In American jurisprudence, cases are shaped by an interpretation of the facts in light of a re-examination of the law. Historically, judges have tried to view the law through the eyes of their predecessors. Legal principles have continually been retested and adapted to the changing needs of society. As case law evolves, legal concepts can be created out of particular instances, which initiate the continuous realignment of cases. Rules change from case to case and are remade with each case. Thus, law formation by the courts has generally involved incremental change. Courts have refused to formulate a precise definition of due process of law and have preferred to define it by the gradual process of judicial inclusion and exclusion in the decisions of cases as they arise.

The concept of due process originates from an ideal of fairness in the government's application of laws and regulations to the individual. In the broadest legal sense, a person has received due process when he/she has been treated essentially the same by governmental action as another person has under similar circumstances when he/she is subject to deprivation of a protected interest. Under this concept, governmental action may not be unreasonable or capricious, and when individuals are not treated alike, there must be a sound basis for dissimilar treatment. Generally, the more serious the charge and/or potential loss, the more procedural protections are necessary to satisfy the

requirements of due process. It may be said that due process is met when the principles of fair play are invoked and when actions are reasonable, just, and not arbitrary.

Although the due process clause was originally designed to ensure basic procedural fairness in judicial proceedings, judges have also interpreted it to mean that substantive state law or administrative action infringing upon broadly defined "liberty" or "property" interests cannot be arbitrary or unreasonable, regardless of how much procedural due process is accorded. In short, courts may be willing to examine the fairness of the result, as well as the sufficiency of the procedure, when the state acts to deprive one of "life, liberty or property." As was stated, however, the due process clause is not a rigid formulation of minimum elements necessary to safeguard an interest. The strictness of its requirements depends upon the nature of the interests affected, the balance between the injury complained of and result gained, and the availability of alternative procedures.

Student-athletes have claimed constitutional protections under the Due Process Clause of the Fourteenth Amendment when the NCAA and the educational institution jointly engage in enforcing NCAA rules against them and/or disciplining them. In a discipline situation, the penalty may be suspension from the team, thus raising the issue whether the same procedural protections accompanying suspension from school are applicable. In addition, as a coach and university employee, due process guarantees grounded the defendant's claim in NCAA v. Tarkanian, a landmark review of the legal relationship between the NCAA and one of its members.

NCAA v. Tarkanian

In NCAA v. Tarkanian (1988), the U.S. Supreme Court reversed the decision of the Nevada Supreme Court and held that the imposition of disciplinary sanctions against their basketball coach by the University of Nevada-Las Vegas (UNLV) was in compliance with the National Collegiate Athletic Association (NCAA) rules and recommendations, and did not turn the NCAA's otherwise private conduct into state action. Accordingly, the NCAA could not be held liable for violation of the coach's civil rights. The decision brought an end to a 13-year legal conflict between the NCAA, the University of Nevada-Las Vegas, and their men's basketball coach, Mr. Jerry Tarkanian.

After a lengthy investigation of allegedly improper recruiting practices by the UNLV men's basketball program, the NCAA's Committee on Infractions found 38 violations, including 10 by Tarkanian. Most serious was the finding that Tarkanian had violated the university's obligation to provide full cooperation with the NCAA investigation. In 1977, the Committee imposed a number of sanctions upon UNLV, including a two-year probation for the basketball program, and requested it to show cause why additional penalties should not be imposed if it failed to suspend Tarkanian from its athletic program during the probation period. The institution considered the onerous options of rejecting the NCAA's sanctions and facing stiffer sanctions or withdrawing completely from the NCAA, and then notified Tarkanian that he was suspended from all affiliation with the university during the period of probation. Facing demotion and a drastic cut in pay, Tarkanian brought suit in Nevada state court, alleging that he had been deprived of his Fourteenth Amendment due process rights.

The Nevada state court held that Tarkanian had been denied procedural and substantive due process of law, and he obtained injunctive relief and an award of attorney's fees against both UNLV and the NCAA. On appeal, the Supreme Court of Nevada affirmed the trial court's grant of injunctive relief against the NCAA and expressed the view that (1) the NCAA's regulatory activity constituted state action under the due process clause and action under color of state law, and (2) the factfinding procedures used by the NCAA had violated due process. The Court stated that:

> ...both UNLV and the NCAA must be considered state actors. By delegating authority to the NCAA over athletic personnel decisions and by imposing the NCAA sanctions against Tarkanian, UNLV acted jointly with the NCAA.

During its 1988 review of the case, the U.S. Supreme Court affirmed that the NCAA is an unincorporated association that includes virtually all public and private universities and four-year colleges conducting major athletic programs in the United States. Basic policies of the NCAA, which are determined by the members at annual conventions, include academic standards for eligibility, admissions, financial aid, and the recruiting of student-athletes. The Court recognized that by joining the NCAA, each member agrees to abide by and to enforce all association rules.

The central question before the Court was whether UNLV's action in compliance with the NCAA rules and recommendations turned the NCAA's conduct into state action. The Court confirmed that UNLV is but one of several hundred public and private member institutions who participate in promulgating the association's rules, and the source of the legislation adopted by the NCAA is not Nevada but the collective membership, independent of any particular state.

In reversing the lower courts finding of state action, the Court stated that:

> neither UNLV's decision to adopt the NCAA's standards nor its minor role in their formulation is a sufficient reason for concluding that the NCAA was acting under color of Nevada law when it promulgated standards governing athlete recruitment, eligibility and academic performance.

Further, the Court recognized that there were options available to UNLV in its response to the NCAA sanctions. The institution retained the authority to withdraw from the NCAA and establish its own standards. In addition, UNLV could have stayed in the association and "worked through the association's legislative process to amend rules or standards it deemed harsh, unfair or unwieldy." The Court concluded that UNLV had "conducted its athletic program under color of the policies adopted by the NCAA, rather than that those policies were developed and enforced under color of Nevada law." The NCAA, as a non-governmental entity, was not required to grant Tarkanian due process.

In early 1990, the injunction that protected UNLV from NCAA sanctions was lifted, although the injunction that shields Tarkanian from suspension by the university remains in effect. This agreement allowed the NCAA to resolve the 13-year legal

conflict with the issuance of sanctions for the 1977 rule violations. In July 1990, the NCAA Infractions Committee banned the UNLV men's basketball team from defending its 1990 NCAA Division I national championship.

The university appealed the sanction to the NCAA Council in October 1990, stating that banning the basketball team from the 1991 NCAA tournament would unfairly punish current players who were in grade school when the rules were broken. At the appeals hearing, the university presented new evidence that included threats of a lawsuit by current UNLV players and the willingness of Tarkanian to allow sanctions against him.

Following the hearing, the NCAA overturned its decision and compromised by offering substitute alternative sanctions to the university. The NCAA agreed to allow UNLV to defend its national basketball championship in the 1991 NCAA Tournament, and the university accepted a penalty that will ban the team from live television and from post-season play in 1992. The penalty was one of two offered by the NCAA.

The conflict between the association and UNLV, however, has not ended. In December 1990, the NCAA charged UNLV with 29 new violations of rules, mainly centered around the recruitment of basketball players. The most serious of the charges allege a lack of institutional control in the recruitment process and in the management of scholarship funds. The university stated that it will contest at least some of the new charges.

Summary

The nature of the regulatory process in intercollegiate athletics continues to undergo significant change. Historically, the process has been characterized by exclusive, private regulation by the NCAA. Although the courts have reviewed the grievances of athletes and universities against the association on constitutional grounds, the U.S. Supreme Court affirmed in NCAA v. Tarkanian in 1988 that the NCAA is a private, voluntary association. The association's regulatory control over its member institutions, however, continues to be reviewed and challenged in state legislatures and in the U.S. Congress.

V. STATE LEGISLATION RELATING TO THE NCAA'S ENFORCEMENT PROCESS

Responding to the issues and the legal holding in the NCAA v. Tarkanian case, a number of state legislatures are pursuing the enactment of standards for the investigation of public institutions by collegiate athletic associations, particularly the National Collegiate Athletic Association (NCAA). A majority of the state legislative initiatives have occurred in response to the investigation by the NCAA of alleged rule violations in a major football or basketball program at one of the state's public universities. Most of the proposed or enacted legislation establishes due process guarantees for all association proceedings with member institutions and for the imposition of all sanctions by the NCAA for rule violations.

Florida

During the 1990 Florida legislative session, a bill was introduced in the Senate that would have required all proceedings of a collegiate athletic association, university, or college that may result in the imposition of a penalty for violation of association rules to comply with due process of law under the State Constitution and laws of Florida. Further, the bill stated that if a collegiate athletic association did not comply with due process, it would be prohibited from imposing a penalty on a college or university for violating association rules or for failing to take disciplinary action against an employee or student who violates association rules.

The bill was designed to control arbitrary sanctions against public universities or colleges, in Florida who are members of the NCAA. Accordingly, institutions, teams, coaches and athletes would not be penalized for violating NCAA rules without first being given the benefit of state-supervised due process. The due process that would be guaranteed to state institutions would include written standards for NCAA procedures during the investigatory and penalty phases of their enforcement activities.

The Senate bill was not acted upon by the 1990 Legislature. As an alternative, the current study by the Commission was requested.

Other States

Nebraska

Nebraska was one of the first states to become involved in the state legislative review of the relationship between public universities and their athletic associations, and particularly the development of legislation to provide protections for student athletes, which NCAA regulations had previously denied them. In 1984, the Nebraska Legislature passed a law that guarantees that scholarships cannot be taken away from injured athletes and provides college athletes with additional disability protection.

During its 1990 session, the 1990 Nebraska Legislature passed into law the "Nebraska Collegiate Athletic Association Procedures Act," which legislates due process guarantees and disallows the NCAA from sanctioning Nebraska public institutions without state review (Appendix C). The law recognizes the significant amount of power that the NCAA exercises over its member institutions, "by virtue of its monopolistic control of intercollegiate athletics," and notes that the NCAA has power to prevent nonconforming institutions from competing in

intercollegiate athletic events. The law states that every stage and facet of all proceedings of a collegiate athletic association, as well as the imposition of penalties for rule violations, must comply with due process of law as guaranteed by the Constitution of Nebraska and the laws of Nebraska.

Illinois

During the past year, the Illinois Legislature has considered a number of measures to require state involvement and review of the relationship between its public universities and the NCAA. State legislators have become concerned with such issues as the amount of power that the NCAA has over its member institutions, lost revenue due to NCAA sanctions that must be offset by other state funds, the inability of institutions to cross-examine witnesses during report investigations, the length of NCAA proceedings and the unfair damage to institutional reputations prior to resolution of charges of wrongdoing. Their interest in these concerns has been heightened by the recent investigations of the University of Illinois' basketball team by the NCAA for major recruiting violations.

Both the Illinois House of Representatives and the Illinois Senate passed resolutions urging the NCAA to revise its bylaws to provide greater protection for those accused of rule violations. One resolution called for the U.S. Congress to regulate NCAA activities with regard to due process guarantees if the NCAA fails to respond accordingly. These resolutions were reviewed in both chambers during the 1990 Summer.

A bill introduced in the 1990 session creates the Collegiate Athletic Association Compliance Enforcement Procedures Act. This act would require athletic associations to follow due process requirements when enforcing rules on NCAA-member institutions who are Illinois public institutions. It requires clear and convincing evidence before sanctions can be given and imposes liability for damages upon athletic associations which violate the act. The bill is currently being debated in the Illinois Senate. Another bill currently in the Senate creates the Intercollegiate Athletic Rights Act. This act is designed to protect all parties under Illinois contract from the unequal, monopolistic bargaining power that exists in their relationship with the NCAA.

Additional legislation that is being considered includes the Working Scholarships Athletic Act, which allows state universities to allow scholarship players to work regardless of athletic association rules, and allows court injunctions against the NCAA if it imposes sanctions as a result of such activity. In addition, the Scholarship Athlete Incidental Living Expenses Act allows state universities to pay such expenses regardless of athletic association rules and imposes liability against the NCAA for imposing sanctions for such activity.

Missouri

Prompted by an investigation by the NCAA of the University of Missouri basketball program, the Missouri House of Representatives sent due process legislation to the Senate that would require the NCAA to follow due process in its investigative proceedings or face financial penalties. The bill was not introduced, however, prior to the adjournment of the 1990 Senate.

South Carolina

A bill that was introduced in the 1990 Legislature proposed that the NCAA be prohibited from imposing sanctions on a public institution prior to state review and full due process guarantees. The bill, however, died in committee during the session. It was reported that the bill may not be re-introduced during the next legislative session, since the two major universities in the state--Clemson and South Carolina--recently received "mild" sanctions from the NCAA for rule violations.

A number of other state legislatures, including Arizona, California, and Texas have reviewed the due process issue in regard to collegiate athletic associations and may pursue the enactment of state legislation in the coming year.

VI. THE REFORM MOVEMENT IN INTERCOLLEGIATE ATHLETICS

The problems of intercollegiate athletics have been well-documented. With the commercialization of intercollegiate athletics fueled by the advent of televising sporting events in the 1950s and 1960s, the pressure increased for coaches and university administrators to produce winning teams at any cost. Flagrant violations of NCAA rules, especially in the areas of recruiting, financial compensation to players, and academic credentials became widespread, although severe penalties were rarely imposed. Although the NCAA had made efforts during this period to reform its disciplinary procedures and impose stricter sanctions, rule violations did not abate.

In 1978, the U.S. House Subcommittee on Oversight and Investigations held hearings to investigate the NCAA and the propriety of its enforcement policies and procedures. The Subcommittee called a variety of witnesses, including college coaches, players, administrators, and attorneys, who provided a generally critical assessment of the association's enforcement process. The hearings substantiated an alarmingly high level of serious rule infractions, including recruiting violations, gifts to student-athletes, improper interpretations of academic standards, and gambling. The subcommittee report eschewed federal intervention but contained 18 specific proposals to effectuate reform. At its subsequent annual convention, the NCAA membership reviewed the recommendations, adopted a portion of the proposals, and rejected some proposals as not being in accord with its philosophy and goals.

The rise in cheating and corruption in athletic programs at both major universities and small colleges has sparked reaction and activity on a variety of levels, both within and outside of the intercollegiate athletic associations. In the NCAA, it is now widely believed that if the association membership does not approve substantive changes in its policies and procedures, change will be dictated by sources outside of the association and the postsecondary community, including federal and state governments.

Faculty

At the institution level, the balance between academics and athletics has been difficult to strike. For the athletic department, winning teams mean increased media exposure and better recruitment and marketing of the program and the institution. A winning program means increased alumni contributions, as well as greater revenues from television and postseason competition. These increased benefits, however, are not generally shared by the academic side of the university.

At many institutions, faculty members are demanding a more significant role in governing the institution's athletic program. Most major universities now have a campus-wide athletics council consisting of faculty, students, and administrators which advises the institution president on all aspects of the institution's athletic program. Many institution presidents also utilize faculty athletic representatives to serve as advocates for ensuring the primacy of the institution's academic mission in all operations of the athletic program. Specifically, faculty members are increasingly involved in determining and monitoring the admissions and financial aid procedures for student-athletes and advocating uniform academic standards for all students.

In 1990, the American Association of University Professors (AAUP) issued a Report of the Special Committee on Athletics entitled **The Role of the Faculty and the Governance of Intercollegiate Athletics** (Appendix D). The Report stated that "faculties are in a unique position to advocate adherence to academic standards" and concluded that faculties should demand the following: 1) full disclosure of information (financial and academic data) about athletic programs on their campuses, 2) direct election of faculty delegates to campus athletic boards, and 3) resistance of attempts to treat student-athletes differently from other students with respect to admissions, tutoring, and advising. The Report identified as a major concern low graduation rates among football and basketball players and concluded that faculties must have an independent voice and provide greater oversight of the administration of intercollegiate athletics.

The Presidents' Commission

Historically, most institution presidents have been either unwilling or unable to effectively deal with the powerful groups that have influenced intercollegiate athletic programs. During the period of rapid growth of intercollegiate competition, exposure, and financial reward, presidents increasingly felt pressure from alumni, politicians, parents, athletic personnel, trustees, and faculty to solve the problems of intercollegiate athletics. The pressure, however, often called for different actions depending on the constituency applying the pressure.

During the 1970s, chief executive officers of member institutions became increasingly involved in NCAA activities, particularly the annual convention. Although positions were created during this period for institution presidents on the general NCAA Council and on steering committees, authority and decision-making positions remained occupied by athletic administrators.

In 1983, a subcommittee of the NCAA Council developed a proposal to establish a "Presidents' Commission" as a permanent entity within the association's administrative structure. Concurrently, a committee of the American Council of Education (ACE) formulated a proposal to establish a "Board of Presidents" that would supersede the NCAA structure by having veto power over the association membership. The membership rejected the ACE proposal and voted to establish the Presidents' Commission as an independent body within the association. An overriding belief at this time was that the implementation of meaningful reform efforts at the institution level would likely be successful only if there existed a collective, visible effort at the national level.

The aim of the Presidents' Commission is to represent the interests of the chief executive officers of member institutions in intercollegiate athletic policy matters. The Commission consists of 44 members, 22 from Division I institutions and 22 from Divisions II and III institutions. It is authorized to: 1) review any activity of the NCAA, 2) place any matter of concern on the General Council's agenda, 3) support and urge action on athletic policy, 4) call a special convention of the association, 5) designate specific agenda items for mandatory roll call votes, and 6) approve the appointment of the NCAA executive director. The Commission works cooperatively with the NCAA Council, administrative committees, and national office staff. The Commission makes recommendations and proposes legislation regarding major athletic policies but has no direct authority over the NCAA Council or other NCAA committees.

The initial activity of the Presidents' Commission was to survey the association membership in 1984 on issues of economics and institutional integrity. The survey data indicated overwhelming support for more stringent NCAA disciplinary legislation. In 1985, a "Special Convention" was mandated to act upon proposals developed from the survey results, and more importantly, to "develop a system to ensure integrity and compliance in intercollegiate athletics." The NCAA approved legislation that included stricter guidelines governing recruiting practices and student-athlete eligibility, as well as several amendments placing greater responsibility on university administrators to supervise the activities and audit the budgets of the athletic departments of their respective institutions. Specific legislation included: 1) an institutional self-study requirement, 2) academic reporting requirements for Division 1-A schools, 3) differentiation of major and secondary sanctions, 4) the "death penalty" for repeat offenders, and 5) annual financial audit requirements. Other areas identified for future review included student financial aid for athletes, athletic staffs, limitation of recruiting periods, and the effects of varsity participation on freshman athletes.

In 1987, the Presidents' Commission conducted a National Forum on the proper role of intercollegiate athletics in higher education, which covered the following topics: economic considerations, governance procedures and the membership structure. During the 1987 convention the Commission failed, however, in its attempt to obtain approval for several reforms of established association policies and procedures.

University presidents, with the support of the NCAA Executive Director, however, continued to respond to the need for serious reform, as well as to the glut of negative publicity, by proposing a new model for collegiate athletics. The Commission remained committed to the goal of integrating student-athletes more fully into campus life and into the general student body. At the 1990 annual convention, the Commission sponsored several successful proposals, including: 1) requirements for disclosure of graduation rates, 2) reductions on time demands of student-athletes, and 3) financial aid allowances for student-athletes attending summer school. The association reported that 169 institution presidents and chancellors attended the 1990 convention.

For the 1991 convention, the Commission developed an extensive reform package of proposals, which addresses cost reductions, restructuring, and time demands on student-athletes. As anticipated, the 1991 convention produced a precedent-setting display of influence and power by the Presidents' Commission, which pushed through an array of reforms (Appendix E). At the convention, 300 college presidents served as delegates and passed reforms by margins of as much as 10 to one. They range from cost-saving cuts in scholarships and coaching staffs to a phase-out of athletic dorms and unprecedented limits of the time coaches can demand of their athletes. During the convention, the NCAA Executive Director called for a year-long study of the process of investigating and sanctioning member institutions guilty of violating NCAA rules. It is anticipated that the association's enforcement procedures will be addressed during the 1992 convention.

Knight Foundation Commission on Intercollegiate Athletics

The Knight Foundation was founded in 1950 by the Knight Publishing Company to support worthy causes through the enhancement of the educational, cultural, social, and economic facets of American life. In September 1989, the Knight

Foundation established the "Knight Commission on Intercollegiate Athletics" to promote athletic reform within intercollegiate athletics. It is a national, independent panel of university presidents, athletic representatives, U.S. Congressmen, and business leaders, including the newly-appointed U.S. Commissioner of Education. The Commission's focus has been described as a "one plus three scheme" and has been primarily concerned with four issues: 1) presidential authority, 2) academic integrity, 3) fiscal integrity, and 4) certification.

One of the most important reforms discussed by the Commission has been to require college presidents to play active roles in their institution's athletic programs. The Commission has sharply criticized athletic programs that operate independent of presidential authority and seek to ensure that college presidents have total authority for maintaining the integrity of intercollegiate athletics. The Commission is also promoting an institutional commitment to the student-athlete. The commitment will eliminate the exploitation of student-athletes by admitting only those who can succeed in traditional academic programs.

Financial integrity in an institution's athletic program is another topic being addressed by the Commission. Over the past decade, athletic program costs have risen tremendously, and athletic directors remain under intense pressure to meet institutional budgets through ticket sales, fundraising, and media revenue. As a result, at many institutions revenue from postseason competition has become crucial in funding the athletic budget and often academic support services such as libraries and research programs. Proposals that are being considered by the Commission include: 1) reducing athletic expenditures, 2) developing new methods of revenue allocation, 3) limiting the authority of booster organizations, and 4) controlling the salaries of coaches.

The most innovative, and controversial, proposal that is being considered by the Commission is to include a review of athletic programs in the institutional accreditation process, as a way to restore confidence in the integrity of college sports. Historically, institutions have shied away from external evaluations of athletic programs. Increasing pressure from faculty, alumni, and the public for program accountability, however, has forced institutions to consider some form of certification process for their athletic programs. Currently, the NCAA is conducting a voluntary review of programs at 47 institutions, but there is increasing agreement of the need for external review.

The Knight Commission continues to conduct hearings on the above issues and follow the reform movement that is being led by the NCAA Presidents' Commission. The Knight Commission is expected to respond to efforts at reform at the NCAA convention and is scheduled to issue a final report of recommendations on intercollegiate athletics in March 1991.

Southern Association of Colleges and Schools

The Southern Association of Colleges and Schools (SACS) is the recognized accrediting agency for collegiate institutions in 11 Southern states. Through its Commission on Colleges, educational standards for colleges and universities are determined. The standards are employed to establish and verify accreditation for those postsecondary degree-granting institutions that award degrees at any or all of the following levels: associate, bachelor's, master's, and doctoral.

Principal concerns in accreditation are the improvement of educational quality throughout the region and the assurance to the public that regional institutions meet established standards.

At the end of 1990, SACS appointed a Special Committee with representatives from the 11 Southern states to examine the adequacy of current standards on intercollegiate athletics and the role that SACS should play in reviewing athletic programs. The Committee will issue a report of its findings during 1991.

VII. ISSUES AND RECOMMENDATIONS

Overview

The Commission has reviewed the enforcement programs of national collegiate athletic associations and has chosen to focus on the policies and procedures of the National Collegiate Athletic Association (NCAA) due to the severity of sanctions that exist in the association's enforcement program, sanctions that can have far-reaching financial and economic consequences for a member institution. Considerable testimony was received from institution athletic representatives, lawyers, sports journalists, and representatives of the NCAA enforcement division, which discussed the adequacy of due process provisions in regard to proceedings between member institutions and the association.

Legal research and testimony by lawyers confirmed that the courts have failed to formulate a precise definition of due process of law. As was concluded in Chapter IV's legal review, due process is said to exist when principles of fair play are invoked and when actions are reasonable, just, and not arbitrary. Accordingly, the Commission has focused on issues of fairness in its review of the NCAA's enforcement procedures.

A central issue in this study was whether a law should be enacted by the Florida Legislature that would mandate due process guarantees for all NCAA proceedings with public universities in Florida. At this time, the Commission does not recommend such legislation, although it found that the association's enforcement process has been arbitrary and is not as fair and consistent as it should be. Instead, the Commission offers a course of action to the legislative to call attention to its concerns and to strongly urge the association to reform its enforcement procedures. As NCAA sanctions can have a severe effect on a member institution, there must be safeguards in the association's enforcement process to ensure fundamentally fair and consistent standards of operation.

The National Collegiate Athletic Association

The National Collegiate Athletic Association is a voluntary, unincorporated association of public and private four-year colleges and universities. As the primary regulatory body in the U.S. for intercollegiate athletics, the NCAA promulgates and enforces standards for the operation of the athletic programs of member institutions. Association rules and procedures are aimed at balancing both the athletic talent and the competition among member institutions. Basic policies of the association are approved by the members at annual conventions, including academic standards for eligibility, admissions and financial aid, the recruitment of student-athletes, and the enforcement of rules and procedures.

Intercollegiate athletics is greatly influenced by the regulatory authority of the NCAA over participation, competition, and national exposure. All postseason competition, including national championship tournaments and football bowl games, are sponsored and regulated by the NCAA, and an institution must be a member to participate. Through participation in these postseason activities, institutions have the potential to derive significant financial reward, depending on the activity and outcome.

Although membership in the NCAA is voluntary and a member institution not wishing to abide by association policies and procedures may resign, the voluntary nature of the association is being increasingly questioned. Withdrawing from membership

precludes an institution and its athletic program from participation in NCAA-sponsored competition and the significant financial benefits that may result from that participation. Recognizing the association's exclusive control of television exposure and all national championships, most member universities and their constituents believe that achieving or maintaining an athletic program of national prominence requires NCAA membership. The Oklahoma Supreme Court in 1977 suggested that the NCAA "is so dominant in its field that membership in a practical sense is not voluntary but economically necessary."

In its most recent review in this area, however, the U.S. Supreme Court affirmed in NCAA v. Tarkanian that the NCAA is a voluntary association. By joining, each member agrees to abide by and to enforce all association rules. The Court recognized that all association standards governing athlete recruitment, eligibility, academic performance, and rule enforcement were promulgated by the collective membership of the NCAA. The Court supported the view that an institution has the option to pursue revisions of policies and procedures within the association or to withdraw. Under the Court's ruling, it is probable that legal challenges to NCAA action will be reviewed according to traditional state association law, as was discussed in Chapter IV, and will require proof that NCAA conduct was arbitrary or capricious or that the association did not follow its own rules. The impact of proposed and enacted due process state legislation has yet to be determined in light of the Tarkanian decision.

Summary of the NCAA's Enforcement Process

According to the NCAA, no formal procedure is required to report suspected rule violations to the enforcement department. Association bylaws allow six months for the enforcement staff to conduct preliminary inquiries to substantiate alleged violations. When the enforcement staff obtains information that indicates that a violation has occurred and that an official inquiry is warranted, the association forwards a letter to the member institution that apprises the institution of the preliminary inquiry and includes specific charges that identify the rule(s) violated, the details of the allegations, and all sources of direct information concerning the matter.

The enforcement staff and the accused institution conduct separate investigations of specific allegations in preparation for a written report to the Committee on Infractions. A series of prehearing conferences are held with both parties to review evidence that will be presented at the infractions hearing. At the hearing, the Committee on Infractions reviews all evidence, determines facts relating to the alleged violations, and issues sanctions. According to association bylaws, a violation will be determined if the information presented during the hearing is "credible, persuasive and of a kind upon which reasonably prudent persons rely on the conduct of serious affairs." An institution may appeal a sanction to the NCAA Council within 15 days of receipt of the Infractions Committee report.

Areas of Concern

Based on the review of public testimony and of information provided by the NCAA on its enforcement procedures, the Commission has identified the following concerns that have resulted in actual or perceived arbitrary or unfair practices in the association's interaction with member institutions.

1. The employment criteria and training of NCAA enforcement representatives. The investigative process provides the foundation of the association's enforcement program. Information gained from the enforcement staff during a preliminary inquiry or a formal investigation becomes substantive evidence of fact that is presented by the staff to the Committee on Infractions during an accused institution's hearing. Accordingly, the existence of a competent, well-trained enforcement staff to carry out the investigative process is critical to the effectiveness of the association's enforcement program.

The association has reported that there are no stated specific educational requirements for employment as an enforcement representative. However, according to the association, all of the enforcement staff have an undergraduate degree and have college athletic or coaching experience. In addition, 10 members of the current staff have law degrees. Training for enforcement staff consists of a one week orientation that is followed by a period of on-the-job training under the direction of experienced enforcement staff.

In consideration of the severe sanctions that may follow an investigation, sanctions that parallel criminal sanctions, the association has insufficient employment criteria and employee training for its enforcement staff to ensure the needed competencies for accurate investigating and reporting. Although the process occurs under the framework of a private association, the need for accuracy in the investigation and reporting of testimony is crucial for an accurate determination of culpability. This is particularly true in light of the NCAA's policy of admitting hearsay or double-hearsay evidence, including written summaries of witnesses' alleged statements.

2. The preliminary inquiry. The enforcement division reported that it receives information on allegations of rule violations in a variety of ways, including correspondence, phone calls, and through the enforcement staff's basic information-gathering activities. All allegations are thoroughly investigated to evaluate their accuracy and significance. Association staff may conduct a preliminary inquiry for a period of time to determine whether there is adequate evidence to warrant an official inquiry. When information has been developed to indicate that rule violations may have occurred that will require further, in-person investigation, the enforcement staff submits written notification to the member institution concerning the preliminary inquiry. The letter of preliminary inquiry seldom includes the names of complainants or individuals who have alleged infractions against the institution. If the allegations warrant an official inquiry by the enforcement staff, the accused institution will receive a letter that includes the rules violated, the details of the allegations and all sources of direct information concerning the matter.

According to enforcement representatives, a preliminary inquiry may take up to six months, and the inquiry occurs prior to the formal notification to the accused institution that a complaint is being investigated. Because of the active role of the enforcement staff early in the investigation and the possibility that a severe sanction may result from the process, providing a member institution with full notice of charges at the earliest possible time would permit the institution to meaningfully participate in the association's investigation of the allegations. Permitting the accused institution to have full access at the outset to all evidence used by the enforcement staff would also aid the process, and allow open and equitable, simultaneous investigations to occur.

3. The investigation and the infractions hearing. Current enforcement procedures call for no official record of the activities of an investigation which includes questioning of individuals involved in alleged rule violations. During a hearing before the Committee on Infractions, the enforcement staff members present their summaries of witness statements and documents gathered during the investigation. Due to the length of certain investigations, which may extend over a number of years, the witness summaries often consist of a collection of interview notes from different enforcement staff. As a result, the Infractions Committee may consider as substantive evidence a summarized statement of an investigator who may no longer be employed by the association.

In these procedures, there is a fundamental lack of protection afforded to member institutions, particularly in light of the potential for the submission of inaccurate or unsubstantiated evidence to the Infractions Committee. Tape recording interviews conducted during an investigation by enforcement staff and by a member institution and preparation of an official transcript prepared by a court reporter or someone with similar training would afford this protection. In addition, the NCAA investigator who conducts an investigation and compiles witness statements and evidence should be present at the infractions hearing.

The association reported that proceedings of an Infractions Committee hearing are tape recorded, but that due to an emphasis on confidentiality, the institution involved in the hearing is not provided the committee's recording or a copy of the transcript of the hearing. Institution representatives are able to review the tape recording at the national office. An accused institution should receive an official transcript of the full proceedings of its hearing following the hearing.

4. The Committee on Infractions. The Committee on Infractions is responsible for the administration of the NCAA enforcement program. The six-member Committee is appointed to three-year terms by the NCAA Council. The association reports that the Committee's members are typically law professors or faculty members who have expertise in regard to intercollegiate programs and the administration of those programs. The Committee's primary task during a hearing is to determine facts related to alleged rule violations and to impose an appropriate penalty. During an infractions hearing, a representative of the enforcement staff serves as the prosecutor of charges against a member institution. Generally, this staff member had conducted the investigation of the alleged rule violations against the institution.

Some member institutions, as well as external groups, have voiced concern about the submission of hearsay or unsubstantiated evidence during infractions hearings, and about problems with regard to consistency and impartiality in the sanctioning process. The Infractions Committee should be a totally independent and professional panel. A panel such as one consisting of retired judges, for example, would be accustomed to and skilled in hearing procedures, would be aware of the problems of evaluating evidence, and would provide a consistency of judgment.

The association's sanctioning authority ranges from the insignificant to the severe, including the association's "death penalty." Numerous complaints of the arbitrary imposition of sanctions have warranted the consideration of a standard set of sanctions for specific rule violations. With considerable support from its membership, the association has attempted to identify minimum prescribed

penalties for secondary or major violations. If adopted, standard penalties for specific rule violations would promote a consistency and fairness in judgments rendered.

5. Statute of Limitations. The NCAA holds the member institution responsible for violations and, in doing so, imposes penalties which are designed to return competitive advantages and benefits gained through improper means and to ensure that the institution itself takes steps to avoid an environment that will condone violations in the future. Current association policy states that allegations included in a letter of official inquiry must be limited to possible violations occurring not earlier than four years before the date of the preliminary inquiry process. The association's investigatory, prosecutorial, and adjudicatory process, however, may require many years to resolve the case. The prospect of legal proceedings and appeals may further extend an active case, as in the Tarkanian case, initiated in 1977, and resolved by the U.S. Supreme Court in 1990.

As a result of this extended process, individuals who have violated association rules often may leave the accused institution prior to the resolution of the case. In a number of past cases, sanctions have severely penalized innocent coaches and student-athletes who were not involved in the previous wrongdoing. A fixed period should exist from the date of the lodging of a complaint against an institution until the investigation is concluded and the matter is either dismissed or reported to the institution with charges and a summary of the evidence. Failure to abide by the deadline would result in a dismissal of the accusation.

6. Conflict of Interest Policy. Under NCAA policy, any member of the Committee on Infractions who is directly connected with an institution under inquiry may not take part in any association proceedings connected with the case. In addition, committee members traditionally have excused themselves from a hearing that affects another member of the conference of the committee member's institution. The association reports that no conflict of interest policy has been adopted for enforcement staff members. A comprehensive conflict of interest policy for all enforcement division staff, as well as Infractions Committee members, should be adopted by the association. A strong, narrowly defined policy would reduce complaints of arbitrariness against the enforcement staff and would promote a fair, objective process.

7. The Appeals Process. A member institution may appeal a sanction to the NCAA Council through submission of a written notice of appeal, within 15 days of receipt of the Infractions Committee report, that challenges the Committee's findings of fact or the penalties imposed. When an appeal is made, the Committee on Infractions submits an expanded infractions report to the Council on the case. Enforcement representatives have confirmed that during the appeals process additional rule violations may be identified, which may result in new charges against the accused institution.

Some member institutions have stated that the prospect of enhanced or new sanctions stifles the appeals process. An additional concern has been that the NCAA Council is not structured to provide a meaningful review of an infractions case. Legal reviews have confirmed that the association has maintained nearly a 100 percent "prosecution efficiency" and that a major Infractions Committee decision has never been overturned. In consideration of the magnitude of the

association's sanctioning authority, the appeals process should be structured similarly to a judicial appellate process in that only the information in the original hearing would be reviewed by an impartial body of professionals.

In the past decade, the vast majority of changes in the operation of the NCAA have addressed academic standards. While the policies and procedures of the association's enforcement division have been modified very little since the 1978 congressional review, there have been an increasing number of allegations of unfair and arbitrary practices in the enforcement division's process of investigating rules violations and in the Infractions Committee's methods of conducting hearings and determining sanctions for member institutions. As was reported, the level of discontent has risen to the point that legislation is being considered in various states to mandate due process guarantees for the involvement of public postsecondary institutions in these procedures.

Legislation on Collegiate Athletic Associations

Federal Legislation

During most of this century, beginning with the early involvement of President Theodore Roosevelt in the restructuring and monitoring of college-level competition, the U.S. Government has, on several occasions, responded to compelling needs for change in the nationwide operation of intercollegiate athletics. In 1972, the U.S. Congress enacted Title IX, which required colleges to spend an equal amount of money on women's athletics. In 1978, responding to widespread abuses of NCAA policies and procedures, a House Subcommittee investigated the NCAA's enforcement division and made recommendations for reform.

During the past decade, the call for the reform of intercollegiate athletics escalated as recurring violations of NCAA rules and the ensuing publicity focused critical attention on the association's enforcement program. In addition to activity in state legislatures, the U.S. Congress has responded to constituent dissatisfaction with the association's monopolistic regulatory control over member institutions. In 1990, the U.S. Congress enacted the "Student-Athlete Right To Know Act," which requires institutions of higher education receiving Federal financial assistance to provide certain information with respect to the graduation rates of student-athletes at such institutions. A bill, cited as the "Coach and Athlete's Bill of Rights," was also filed in the U.S. House of Representatives "to provide for procedural and substantive due process of law for coaches and players subject to suspension as a result of sanctions imposed, or threat of sanctions, upon an educational institution by the National Collegiate Athletic Association." While the bill was not acted upon, it is anticipated that the bill will be considered during the 1991 congressional session.

If it is ultimately determined that legislation is needed to guarantee a fair, consistent process for the NCAA's investigation and adjudication of allegations of rule violations against member institutions, federal legislation may be the most appropriate approach. Proponents of federal legislation believe that a carefully and narrowly drafted law could provide a standard set of policies and procedures to guide all proceedings between educational institutions and national athletic associations.

State Legislation

Responding to increasing discontent with the enforcement process of the NCAA whereby the association investigates allegations of rule violations, conducts hearings, and determines sanctions, a number of state legislatures have considered legislation to mandate procedural safeguards in all matters between national athletic associations and the public universities in the state. Most of the proposed or enacted legislation establishes due process guarantees for all association proceedings with member public institutions in the state and for the imposition of all sanctions for rule violations. At this time, Nebraska is the only state to have passed such a law. The 1990 Nebraska Legislature passed the "Nebraska Collegiate Athletic Association Procedures Act," which requires that every stage and facet of all proceedings of a collegiate athletic association, as well as the imposition of penalties for rule violations, must comply with due process of law as guaranteed by the Constitution of Nebraska and the laws of Nebraska (Appendix C). As reported earlier, a bill that mirrored the Nebraska law was introduced in the Florida Senate during the 1990 legislative session, but was not acted upon.

Lawyers who testified before the Commission agreed that a fundamental flaw in Nebraska's enacted, and other states' proposed, legislation is the lack of a clear definition of due process standards, as was discussed in Chapter IV. As an example, due process of law is addressed in the Florida Constitution in Article I, Section 9 in the following way:

> No person shall be deprived of life, liberty or property without due process of law, or be twice put in jeopardy for the same offense, or be compelled in any criminal matter to be a witness against himself.

Although yet to be challenged in the courts, legal authorities have surmised that the vagueness of state legislation, such as the recently enacted Nebraska law, will not bear judicial scrutiny.

In addition to legislation, state leaders have considered other methods to promote reforms in the NCAA's enforcement procedures. In 1990, the California Legislature adopted an Assembly Joint Resolution relative to the NCAA. The Resolution stated in part that:

> the Legislature of the State of California respectfully requests the President and the Congress of the United States to pass legislation which would require the National Collegiate Athletic Association to adopt procedures to guarantee due process to member schools and their students and coaches.

At this time, the Commission does not recommend state or federal legislation that would mandate due process guarantees for all NCAA proceedings with public universities in Florida and believes that legislation would be an ineffective way to achieve reform. In light of the tremendous amount of rule violations by member institutions, particularly in the areas of the recruitment and subsidization of student-athletes, changes in the association's enforcement procedures should be cautiously considered. The NCAA believes that laws adopted by individual states would most likely lack uniformity and would result in inconsistent standards throughout the country, causing considerable impediments to the association's already overtaxed enforcement program. Of greater concern is the potential economic harm to institutions in a state that enacts due process

legislation if the NCAA reacts to the legislative restrictions by removing the institution from the association.

The Commission also recognizes the significance of the Tarkanian decision in which the U.S. Supreme Court upheld the status of the NCAA as a private, voluntary association, and the fact that all association standards, including its enforcement policies and procedures, were approved by and are upheld by the collective membership. In recognition of this current legal holding, while the need for substantial revisions in the enforcement procedures has been clearly established, it is appropriate that the NCAA should be given the first opportunity to initiate, approve, and implement reform of its enforcement program. Accordingly, the Commission recommends the following course of action:

Recommendation:

1. **The Florida Legislature should adopt a Resolution that calls for the National Collegiate Athletic Association to enact substantive reforms to its enforcement program which will address the following concerns identified by the Commission:**

   A. the employment criteria and training of NCAA enforcement representatives;

   B. the covert nature of the preliminary inquiry of allegations by the enforcement staff;

   C. the use of summaries of witness statements as substantive evidence;

   D. the composition and functioning of the Committee On Infractions;

   E. the length of time from the initial complaint of rule violations to the resolution of the charges;

   F. the adequacy of the association's conflict of interest policies;

   G. the appeals process that includes the possibility of additional sanctions resulting from the appeal.

A formal resolution from the Florida Legislature will send a clear message to the association leadership that Florida is concerned about the NCAA's exclusive control of intercollegiate athletics and, more specifically, about the potential for unfair or arbitrary treatment of member institutions in certain aspects of the enforcement process, as identified in this report.

In a thorough review of the enforcement program by the association membership at its 1992 Annual Convention, the policies and procedures that cannot be soundly defended as fair and consistent standards of operation should be modified. Vigorous support for reform will be needed by State University System presidents and faculty athletic representatives at the convention to ensure that specific procedural reforms are enacted to the enforcement process. Following the

convention, enacted reforms will need to be evaluated to determine whether they are sufficient to guarantee fair and consistent standards of operation for Florida member institutions.

Recommendation:

2. **Following the 1992 NCAA Annual Convention, the Florida Legislature, the Postsecondary Education Planning Commission and the Board of Regents should evaluate the specific reforms to the association's enforcement program to determine if they adequately provide fair and consistent standards of operation for the State's member institutions.**

Conclusion

The NCAA has grown from a purely legislative organization with no enforcement or adjudicative mechanisms to an organization that not only drafts rules but also administers and resolves disputes concerning those rules. Widespread abuses in association rules, particularly in the recruitment and subsidization of student-athletes have been brought to the public's attention by the mass media and have been verified by member institutions. The increasing prevalence of these factors have heightened the call for reform of the system.

Given the NCAA's exclusive control over major college athletic competition and exposure, and its ability to directly influence a student-athlete's eligibility for future financial aid and opportunities for a professional sports career, the NCAA's status as a private, voluntary association may be shortlived. The Commission believes that the careful monitoring of the association's policies and procedures, particularly its enforcement program, should continue to occur by educators, legislators, and, when warranted, the judiciary.

The Commission's report is not intended to challenge the integrity of the members of the NCAA enforcement division nor the Committee on Infractions but to serve as a challenge to self-reform. The concerns that have been raised in Florida are similar to numerous other states and their member institutions. Judging from the discontent of a considerable number of member institutions, there is a clear sense that the association's enforcement process has been arbitrary and is not as fair as it should be. The NCAA must enact reforms that will guarantee that member institutions who become involved in the enforcement process will be afforded fair and consistent standards of operation.

APPENDIX A

NCAA Statement and Responses to Commission Questions

Statement of the

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

before the

STATE BOARD OF EDUCATION

POSTSECONDARY EDUCATION PLANNING COMMISSION

January 23, 1991

The National Collegiate Athletic Association (NCAA) is a voluntary, unincorporated association of 1,017 members consisting of college and university, conference and associations, and other educational institutions. An active member of the Association is a four-year college or university (or in a few cases, a two-year upper-level collegiate institution accredited by the appropriate regional accrediting agency). Active members have the right to compete in NCAA championships, and to vote on legislation and other issues before the Association. Active members of the Association are located in every state of the United States. The active members are divided, for purposes of bylaw legislation and competition in intercollegiate championship events, into Divisions I, II and III, with further classification of Division I members into Division I-A football and Division I-AA football.

All legislation of the Association that governs the conduct of the intercollegiate athletics programs of its member institutions must be adopted by the membership during the Association's annual Convention and must be consistent with the purposes and fundamental policy set forth in the NCAA Constitution. Among the purposes of the Association found in its Constitution are:

a. To initiate, stimulate and improve intercollegiate athletics programs for student-athletes, and to promote and develop educational leadership, physical fitness, athletics excellence and athletics participation as a recreational pursuit;

b. To uphold the principle of institutional control of, and responsibility for, all intercollegiate sports in conformity with the Constitution and bylaws of this Association;

c. To encourage its members to adopt eligibility rules to comply with satisfactory standards of scholarship, sportsmanship and amateurism;

d. To legislate, through bylaws or by resolutions of a Convention, upon any subject of general concern to the members related to the administration of intercollegiate athletics, and

e. To study in general all phases of competitive intercollegiate athletics and establish standards whereby the colleges and universities of the United States can maintain their athletics programs on a high level.

Also, the fundamental policy of the Association provides:

a. The competitive athletics programs of member institutions are designed to be a vital part of the educational system. A basic purpose of this Association is to maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body, and by doing so, retain a clear line of demarcation between intercollegiate athletics and professional sports.

b. Legislation governing the conduct of intercollegiate athletics programs of member institutions shall apply to basic athletics issues, such as admissions, financial aid, eligibility and recruiting. Member institutions shall be obligated to apply and enforce this legislation, and the

enforcement procedures of the Association shall be applied to an institution when it fails to fulfill this obligation.

While the members themselves enact the legislation dealing with recruiting, eligibility, financial aid, admissions and other legislation, they agree also to self-administer all such legislation. Thus, if the member finds that a student-athlete is ineligible under the Constitution, bylaws or other legislation of the Association, the member institution is obligated immediately to apply the applicable rule and withhold the student-athlete from all intercollegiate competition. Thereafter, there are provisions for the institution to appeal to the Eligibility Committee for restoration of the student's eligibility.

It should be noted at this point that the membership of all committees of the NCAA are made up only of those individuals who are full-time, regular staff members (as defined in the Association's bylaws) of a member institution or member conference. No NCAA staff person is a voting member of any committee. The same is true of the Association's 46-member Council, which directs the general policies of the Association between Conventions. The Council members are elected by the members at the annual Convention, and there are further provisions requiring that membership on the Council be selected as representative of the various divisions, the various regions, and that each divisional representative consist of a specified number of chief executive officers and women members from the various member institutions.

As in all organizations with rules of conduct governing the activities of its members, there also are provisions enacted by the membership to enforce the membership's national uniform regulations. Such provisions are included in the bylaws and require that individuals employed by (or associated with) a member institution to administer, conduct or coach intercollegiate athletics and all participating student-athletes shall deport themselves with honesty and sportsmanship at all times so that intercollegiate athletics, as a whole, their institutions and they, as individuals, represent the honor and dignity of fair play and the high standards associated with wholesome competitive sports. Contractual agreements or appointments between a coach and an institution are to have a stipulation that a coach who is found in violation of NCAA regulations will be subject to disciplinary or corrective action, as provided in the NCAA enforcement procedures. Likewise, there are a number of bylaw provisions dealing with amateurism, recruiting, eligibility, financial aid and improper awards, benefits and expenses of student-athletes, the alleged violation of which also is subject of the NCAA's enforcement procedures.

Although the vast majority of the members apply and follow the rules they have elected to place upon themselves, unfortunately there are instances where some conduct alleged to be in violation of the rules is brought to the attention of the NCAA. The handling of such is under the NCAA enforcement program. All allegations and complaints relative to a member's failure to maintain the academic or athletics standards required for membership, the member's alleged violation of the Association's legislation or regulations, or the member's

failure otherwise to meet the conditions and obligations of membership are channeled to the NCAA enforcement staff.

The NCAA Constitution provides that the Committee on Infractions is empowered to adopt or amend the procedures for the conduct of the enforcement program, subject to the approval by the Council and subject further to amendment by the membership at the annual Convention. All such policies and procedures must be consistent with the provisions of the NCAA Constitution and bylaws. It is this committee that is responsible for the administration of the enforcement program.

The Committee on Infractions ("committee") is composed of six members (who are on the staffs of member institutions or conferences) appointed by the Council for a three-year term. A member may be reappointed but may not serve more than nine years on the committee. The duties of that committee are to consider complaints concerning any member institution; formulate and revise operating policies and procedures in regard to issues other than those concerning institutional penalties, restitution and committee duties (all of which are adopted only by the membership); determine facts related to alleged violations, and impose an appropriate penalty or show-cause requirement on a member found to be involved in a major violation.[1] The disciplinary measures that may be adopted by the committee and imposed against the institution for major violations have been adopted by the membership and are contained in the bylaws.

Under the investigative guidelines of the committee, the enforcement staff of the NCAA initially is responsible for gathering and evaluating information to determine whether the alleged charges are received from responsible sources and whether charges are substantial. This may include contacting individuals to solicit information. If reliable information gathered indicates that there may be some substance to the charges, the enforcement staff then conducts a preliminary inquiry to determine whether there is adequate information to warrant an official inquiry. It is at the commencement of this preliminary inquiry that the staff submits letters to the institutions notifying them that a preliminary inquiry into their athletics policies and practices is being made, and that an enforcement representative is being assigned to the investigation. The letter also states that in the event allegations appear to be of a substantial nature, an official inquiry may be filed, or conversely, the institution will be notified that the matter has been closed. During the preliminary inquiry, the staff must inform the institution of the general status of the inquiry every six months after the initial notice. If the inquiry has not been concluded within one year, the staff reviews the status of the case with the committee, and the committee must determine whether further investigation is warranted. If so, its decision as to continuing the investigation is communicated to the institution in writing.

[1]There are two types of violations -- a secondary violation, which is one that is found to provide only a limited recruiting or competitive advantage to an institution and is found to be isolated or inadvertent, and a major violation, which is all other violations. The assistant executive director for enforcement is charged with identifying the alleged charges as major or secondary. Corrective actions relating to a secondary violation may be effected by the assistant executive director for enforcement. All actions of the said assistant executive director are subject to approval by the committee. A member may appeal the assistant executive director's action to the committee. Hereafter, the discussion will deal only with the handling of major violations.

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The investigation procedures that must be followed by the staff are those established by the committee, and approved by the Council and the membership. These include such requirements as scheduling all interviews of student-athletes or coaching staff members who are involved in possible violations on campus through the institution's director of athletics. An institutional representative designated by the institution (frequently a lawyer) is permitted to be present during the interview.

When an enforcement representative requests information that could be detrimental to the interests of the student-athlete or institutional employee being interviewed, that individual must be so advised that the purpose of the interview is to determine whether he or she has been involved directly or indirectly in any violation of NCAA legislation. Further, prior to the staff alleging that an individual has violated NCAA ethical-conduct legislation, the individual also must be advised that such an allegation may be forthcoming based upon the individual's involvement in violations, refusal to furnish information relevant to the investigation of possible violations, or providing false or misleading information to the NCAA, the conference or the institution concerning the individual's knowledge of or involvement in a violation. When an enforcement staff member conducts an interview that may develop information detrimental to the interests of the individual being questioned, that individual may be represented by personal legal counsel throughout the interview. Individuals who have given information to the enforcement staff that will be used in an infractions case are given the opportunity to review the investigator's report, and to make additions and corrections. Throughout the preliminary investigation, the staff is to develop any information that would refute or corroborate the alleged violations.

The enforcement staff shall terminate the investigation if the information does not appear to be of sufficient substance or reliability to warrant an official inquiry. If the staff determines that an allegation or complaint warrants an official inquiry, it directs such to the chief executive officer of the institution. Such official inquiry must include a statement of the regulations alleged to have been violated, the details of each separate allegation which, in view of the staff, can be supported sufficiently to reasonably expect that the committee would find a violation and the identification of the principals involved in the allegations. The institution is requested to itself interview the principals identified in the allegations, indicate whether the allegations are substantially correct and submit evidence to support its response, as well as any other related or additional information it feels appropriate. The institution also is required to advise any involved present or former institutional staff member and any prospective, present or former student-athlete whose eligibility could be affected by the charges, and to further advise all such individuals that they have the opportunity to submit any information they desire in response to the charges. These individuals also must be advised that they and their personal legal counsel may appear before the committee. Finally, the staff gives the institution the names, addresses and telephone numbers of individuals previously contacted by the staff with respect to any allegations in the case. The staff also must separately

notify athletics department staff members and student-athletes at institutions other than the one under inquiry of the official inquiry.

Subsequent to the receipt of the responses to the official inquiry by all parties, and prior to any hearing before the committee, prehearing conferences are held with the institution and all affected institutional staff members and student-athletes with their legal counsel. During these meetings, the staff will provide all information it intends to use to support the allegations in the official inquiry before the committee, and at these meetings, all involved parties review all applicable memorandums and documents. Throughout the period of time before the committee hearing, the enforcement staff is available to meet with institutional representatives and affected individuals to clarify issues and to discuss additional investigations or interviews that are necessary to supplement the institution's and the individuals' responses. Before the hearing, the staff also must prepare a summary statement of the case that identifies the individuals upon whom and the information upon which the staff will rely in presenting the case to the committee. This summary must be given to the committee members, and to representatives of the institution and the involved individuals. No other specific information and evidence developed by the staff is presented to the committee prior to the actual hearing.

Only after the investigations are completed by the institution, the institutional employees, the student-athletes and the enforcement staff, and after the various prehearing procedures mentioned above are concluded is the Committee on Infractions' hearing held. By this time, the committee and all parties have available to them for the hearing the official inquiry, the responses to the official inquiry submitted by the institution and by all other involved individuals, and the summary statement of the case. Likewise, institutional staff members and student-athletes and/or their personal legal counsel present their information and arguments. The enforcement staff of the NCAA cannot present any information to the committee that can be attributed to individuals who are unwilling to be identified as to the source of the information. The institution and all involved individuals also present information concerning mitigating or other factors that should be considered by the committee in arriving at any appropriate penalties. The committee members may question all persons appearing at the hearing, and questions and information may be exchanged between and among all parties participating in the hearing.

After the conclusion of the hearing, the committee makes its determinations of fact and violation privately. It then issues its written report, setting forth its findings and penalty to be imposed, if any, which report goes to the chief executive officer of the member institution (with copies also to all individuals receiving copies of the official inquiry). That report also is released to the public with names deleted. The committee must base its findings on the information presented to it that it determines to be credible, persuasive and of a kind on which reasonably prudent persons rely in the conduct of serious affairs. The findings of violation or questionable practices must be by majority vote of the committee members present and voting. The imposition of a penalty or recommended action requires the favorable vote of at least four members of the committee when all six are present and participating, and

the favorable vote of at least three members when fewer than six members are present.

An institution may appeal the findings, the penalty or both to the division steering committee of the Council representing the same division as the institution. Any current or former institutional staff member who is involved in a finding of violation resulting in proposed disciplinary action toward such individual or in an ethical conduct finding may appeal to the same Council committee.

If an appeal is taken, the committee must submit to the Council an expanded infractions report containing the violations found, a statement of the committee's proposed penalties, a statement of the origin of the case, related factors appropriate for consideration in judgment of the case and the corrective actions taken by the institution or conference involved in the incident. A copy of such expanded report is given to the appealing party prior to any appearance before the Council. The appealing parties submit a written appeal and may contest both the findings and proposed penalties, and may set out additional or new facts and arguments, as well as arguing that the committee's determination based on the facts presented to it was erroneous. While an appealing party must submit a written appeal to the Council, it has the option of a personal appearance before the Council. If the appealing party elects to be represented in person, it or the individuals designate the representatives who will appear before the Council, and included in such may be the institution's legal counsel and the personal legal counsel of the individual.

After the decision of the Council on appeal and a penalty is publicly announced, the penalty may be reviewed upon a showing of newly discovered evidence directly related to the findings or that there was a prejudicial error in the procedure followed in the processing of the case.

The enforcement procedures have been adopted by the membership. In adopting such, the members have adhered to the basic principle of institutional control of, and responsibility for, their own employees and student bodies. Thus, the procedures are directed against the member institutions. The NCAA does not take action against student-athletes or an institution's employees, but only against the member institutions. However, by the legislation, the members are required to apply the agreed-upon rules in their dealings with their own students and employees.

One of the enforcement procedures' basic premises is that it is designed to be a cooperative venture wherein the Committee on Infractions, the NCAA staff and the member institutions work together to ascertain the facts relating to the observance of the NCAA rules. Furthermore, every member institution has agreed to demonstrate the same interest as the Committee on Infractions in ascertaining if individuals charged with administering intercollegiate athletics observe the agreed-upon rules. It is this spirit of a cooperative endeavor, as distinguished from an adversary proceeding, that runs throughout the enforcement proceedings. Yet the procedures do provide that an institution, institutional staff members and the student-athletes be given detailed, factual

allegations in writing; names of all individuals the NCAA has contacted so that they can directly contact such individuals; an opportunity to examine all information ahead of time that the NCAA staff will present to the committee; an opportunity to reply in writing to the allegations; an opportunity to appear at a hearing with counsel before the committee; a written decision of the committee's findings and proposed penalties, if any; an opportunity to appeal the findings of violation and/or penalties; a further opportunity to submit in writing its or their positions to the appellate body, the Council; a copy of the committee's expanded infractions report outlining the reasons for its decision; still another hearing in person before the governing Council subcommittee, and finally, the Council's written decision.

These procedures do more than merely provide "notice of the charges" and "opportunity to present the institution's or student's version of the facts," the basic elements of due process. These procedures are in place even though courts which have addressed the issue have held that participation in intercollegiate athletics is not such an interest or property right that requires the protection of a due-process hearing, and even though the Supreme Court of the United States has held that the NCAA is not a "state actor" subject to attack by individuals or entities claiming a violation of Constitutional rights.

It should be emphasized that both the institutions and the individuals involved have, prior to the hearing, not only had the opportunity to interview and obtain written statements from the principals named in the official inquiry, and whose addresses and identity are furnished to them by the NCAA staff, but that they are encouraged to contact such principals or any other individuals who may have information pertaining to the matter in order to make sure all available facts are learned. The institution then may incorporate the statements it so obtains in its written responses presented to the committee. In addition, of course, the institution knows what the principals have told the staff investigators. By following these procedures, there is very little material, if any, presented to the committee at the hearing that has not been the subject of extensive prehearing investigation by the institution. Additionally, the institution and involved individuals are given the opportunity to examine the facts and memorandums gathered by the NCAA prior to the committee's hearing. In short, in the vast majority of cases, there is very little dispute as to the facts by the time the committee actually hears the case. It further should be noted that the NCAA appeal process provides much broader rights to institutions and individuals than normally is thought to be the case. Institutions are not limited to an appeal "on the record" as in a court of law. Rather, they may appeal any of the findings, and in doing so, they may present new evidence or arguments to the Council in the appeal hearing.

It has been said that the NCAA should utilize a procedure wherein live witnesses testify before the committee and that the institutions be allowed to cross-examine the witness as in a criminal case. Under the enforcement procedures, however, the institutions have, in fact, already interrogated the witnesses themselves, and obtained statements and affidavits from such witnesses; they have responded to the detailed official inquiry, and they have had the

opportunity to submit statements and materials from any other source. Again, it must be remembered that in the investigation, there is an identity of interest among the members in this regard rather than an attitude of adverse, conflicting objectives. The member institutions operate on the basic premise that eligibility rules be adopted and enforced to comply with satisfactory standards of scholarship, sportsmanship and amateurism. The committee's process is neither a criminal prosecution nor an adversary proceeding in the usual sense. The primary issue before it is whether a member, a member's employee or a student-athlete violated a rule enacted by the membership. Secondly, there is no process whereby the NCAA can force individuals to appear before the committee for purposes of cross-examination, as there is no means for the committee to issue subpoenas. Even if a particular jurisdiction somehow would be able to cloak the private Association with such authority within its boundaries, this would not solve the witness problem. More often than not, the principals and witnesses in these matters are located in many jurisdictions throughout the United States.

As stated previously, few facts are in dispute by the time the matter comes before the committee. Many of the matters at that hearing involve the question of mitigating and presentation of factors explaining why or how the violations occurred, or an interpretation as to whether the admitted facts constitute a violation. Cross-examination and confrontation of witnesses at this point gains nothing. If the institution or individuals feel the committee did erroneously decide a disputed fact, they have the full opportunity of presenting additional or new facts relating to such during the appeal process to the Council. Likewise, if they feel that the NCAA staff presentation to the committee contained errors or misstatements, they are free to contact the sources again and present further information developed by them to the Council during the appeal. The appeal process is not limited to an argument based "on the record." Rather, new or additional facts may be presented.

Certainly, the members of the Association have adopted principles governing the conduct of their own intercollegiate athletics programs. These principles place the responsibility on each member institution to control its program in compliance with the rules and regulations enacted by the members. This responsibility includes being responsible for the actions of the individuals employed by or associated with the institution, including the student-athletes, the coaches, the faculty athletics representatives and any others associated with the institution's athletics interests. In carrying out these responsibilities, the institutions place upon themselves the responsibility to monitor their programs in order to assure compliance with the rules. Ordinarily, such responsibility includes the institution itself identifying and reporting instances in which compliance has not been achieved. Yet, as in any organization, the members recognize that there may be instances where non-compliance occurs. Thus, the institutions have so enacted the enforcement program as to make it an essential part of their own intercollegiate athletics programs. The foundation of such a program requires full disclosure and cooperation with the Committee on Infractions and Council during the course of an investigation. The fact that a violation has been alleged and is being investigated does not mean the institution abandons its responsibility to ascertain

the facts. To the contrary, the institution is obligated to proceed to ascertain the facts and circumstances surrounding the alleged violation. The procedures adopted to investigate noncompliance may be modified by the members as any other legislation they enact. While there may be a delicate balance of all the principles and objectives, the procedural fairness is not left to chance. The enforcement procedures have been considered carefully, reviewed and modified from time to time when circumstances have required such. There is a genuine identity of purpose in the desire of the membership and the Committee on Infractions to determine facts rather than an attitude of conflicting objectives one may find in a criminal, adversary proceeding.

/aj

Enforcement Staff

1. For the current investigative/enforcement staff, describe the following:

   * staff size
   * staff longevity
   * sex and racial composition of staff
   * education requirements
   * preservice and inservice training program

Response

Appendix A includes the names, titles and starting dates of employment for all members of the NCAA enforcement staff. The NCAA currently employs an assistant executive director for enforcement, who acts as department head and who supervises the work of four directors of enforcement. Thirteen full-time enforcement representatives (investigators) and one part-time special investigator are supervised by the directors.

During the past 15 years, the average tenure of an enforcement representative has been less than three years. The tenure of the current staff is slightly longer, and is comprised of four female and nine male enforcement representatives. Three administrators are Black. There are no stated specific educational requirements to be employed in the enforcement department; however, all current enforcement staff members have undergraduate degrees, and 17 members of the enforcement staff have either a postgraduate degree or have been involved in coaching, or were involved in intercollegiate athletic competition while an undergraduate. Finally, 10 members of the enforcement staff have law degrees.

A majority of individuals employed in the NCAA enforcement department have experience in intercollegiate athletics, either by participation as a student-athlete, or coaching or administrative experience, prior to being employed with the NCAA. With this experience, enforcement representatives have an understanding of the recruitment process and of NCAA legislation that affects student-athletes.

A newly hired enforcement representative spends his or her initial week reviewing NCAA legislation with emphasis placed upon review of the NCAA Enforcement Policies and Procedures set forth in Bylaws 19 and 32. In Appendix B, a copy of an orientation schedule for a recently hired enforcement representative is included. After the first week of orientation, an enforcement representative will take several training trips with experienced enforcement representatives in order that the new enforcement representative may observe the interviewing techniques of a variety of staff members. A newly hired enforcement representative will have approximately four training trips, which encompass observing and traveling with experienced NCAA enforcement representatives for at least one week each. Further, the enforcement representative's work product and travel schedule is monitored by a director, and all travel requests must be approved by the assistant executive director.

2. What is the role of the investigative staff in identifying NCAA rule violations?

Response

Appendix C is a copy of NCAA Bylaws 19 and 32, which set forth the Enforcement Policies and Procedures. The enforcement staff is responsible for evaluating, investigating and processing information concerning alleged violations of NCAA rules. Information concerning secondary and major violations is processed in accordance with NCAA Bylaws 19 and 32 under the general supervision of the six-member NCAA Committee on Infractions. As noted in the Enforcement Policies and Procedures, NCAA Bylaws 19 and 32 are approved by the elected NCAA governing Council, and are subject to adoption or change by vote of the NCAA membership at any annual Convention. In excess of 300 secondary infractions cases and approximately 20 major infractions cases are processed annually.

Once the facts of a matter are established and it is determined that a violation has occurred, the assistant executive director for enforcement is authorized to determine whether the violation is secondary or major in nature and is authorized to make initial decisions regarding possible restoration of eligibility, when necessary. Decisions concerning major or secondary violations are subject to the approval of a member of the Committee on Infractions and may result in penalties prescribed by Bylaw 19 of the enforcement procedures. Initial decisions concerning eligibility are subject to review by the chair of the appropriate division subcommittee of the NCAA Eligibility Committee. Appeals concerning eligibility are considered by a subcommittee of the NCAA Council, while appeals concerning secondary infractions matters are considered by a six-member Committee on Infractions.

In cases involving in-person investigation rather than correspondence, the enforcement staff follows the investigative guidelines set forth in Bylaw 32. If it is determined that sufficient information has been developed to reasonably expect the Committee on Infractions to find a violation, appropriate documents are generated by the enforcement staff to require an institutional investigation and written response. The enforcement staff communicates directly with the involved institution and individuals regarding their opportunities to participate in the process, as described in the enforcement procedures. The enforcement staff also presents information verbally during Committee on Infractions hearings concerning major infractions cases.3. Who can file a complaint that alleges a rule violation against a member institution?

Investigative Process

3. Who can file a complaint that alleges a rule violation against a member institution?

Response

Anyone can report information to the enforcement department regarding potential violations of NCAA legislation involving a member institution, a representative of an institution's athletics interests, a coaching staff member, or a prospective or enrolled student-athlete. There is no formal procedure to report information to the enforcement staff, and information often is reported to the enforcement staff via correspondence or by telephone. Further, the enforcement staff reviews a variety of newspapers published throughout the United States, monitoring articles that may pertain to potential violations of NCAA legislation. Consistent with NCAA procedures, it also is the enforcement staff's responsibility to engage in basic information gathering and, in doing so, may contact individuals to solicit information concerning possible violations (see Appendix C, NCAA Bylaw 32.2.2.1.1).

4. What level of wrongdoing must occur before a complaint is investigated?

Response

The NCAA membership adopted enforcement procedures that place the responsibility of evaluating information reported to the NCAA office with the enforcement staff to determine whether the possible violation(s) should be handled by correspondence with the involved institution or its conference, or whether the enforcement staff should conduct its own in-person inquiries. When information is reported to the enforcement staff, that information is reviewed to determine whether the information can be corroborated, verified or substantiated in any fashion. Consistent with enforcement procedures, matters that clearly are isolated or of relative insignificance should be handled promptly by correspondence with the involved institution (see Appendix C, NCAA Bylaw 32.2.2.1.2).

A review of information by the enforcement staff often results in a preliminary judgment of whether the potential violation is secondary or major in nature. A secondary violation is one that provides only a limited recruiting or competitive advantage and that is isolated or inadvertent in nature. All violations other than secondary violations are major violations, specifically including those that provide an extensive recruiting or competitive advantage (see Appendix C, NCAA Bylaws 19.02.2, 19.02.2.2 and 32.2.2.1).

When reasonably reliable information has been obtained indicating that a violation has occurred and that the violation appears to indicate intentional wrongdoing, a significant competitive advantage, or that false or misleading information has been reported to the involved institution or

to the NCAA, the matter should be assigned to an enforcement representative for investigation (see Appendix C, NCAA Bylaw 32.2.2.1.3).

5. How are investigators assigned to pursue any complaints found sufficient to commence a preliminary investigation?

Response

An enforcement representative usually is assigned an infractions case after discussion of the matter by the directors. Factors considered when assigning an infractions case to an enforcement representative include who obtained or developed the original information and in what fashion; the current case load that an enforcement representative is working on; the experience level of an enforcement representative assigned to a particular case; the familiarity of the enforcement representative to the information developed to date and the familiarity of the enforcement representative to the particular sport that may involve potential violations of NCAA legislation, and the geographical area where the potential violations may have occurred and whether an enforcement representative is assigned to that geographical area as a result of his or her participation in the monitoring of prospective student-athletes in a specific geographical area. [NOTE: The NCAA enforcement department currently assigns an enforcement representative a geographical area of the United States where that enforcement representative monitors the recruitment of highly recruited prospective student-athletes in the sports of football, and men's and women's basketball.]

6. Explain the process that is followed after a complaint is received by the Enforcement Division, including the following:

   a. When is a member institution notified that an investigation has begun? Is the notification in writing and does it include the complainant's name and transcribed to recorded statement?

   b. Is there a final, formal written charge to which the institution is advised they will have to respond to at a hearing?

Response

After information is received by the enforcement staff, the staff, so far as practicable, makes a thorough investigation of all charges that are received from responsible sources and that are reasonably substantial. The enforcement staff may conduct a preliminary inquiry for a reasonable period of time to determine whether there is adequate evidence to warrant an official inquiry, and in conducting this inquiry, the services of enforcement representatives may be used (see Appendix C, NCAA Bylaw 32.2.2.3).
The enforcement staff submits letters to notify member institutions of preliminary inquiries into their athletics policies and practices when

information has been developed to indicate that violations of the Association's governing legislation may have occurred that will require further, in-person investigation. Such a letter advises the member institution that the preliminary inquiry will entail the use of an enforcement representative. The letter states that in the event the allegations appear to be of a substantial nature, an official inquiry may be filed in accordance with enforcement procedures, or in the alternative, the institution will be notified that the matter has been closed (see Appendix C, NCAA Bylaws 32.2.2.4 and 32.5).

Further, during the period of the preliminary inquiry, the enforcement staff will inform the involved institution of the general status of the inquiry not later than six months after the initial notice (see Appendix C, NCAA Bylaw 32.2.2.4.1).

If the inquiry has not been processed to conclusion within one year of the date of the initial notice, the enforcement staff will review the status of the case with the Committee on Infractions. The committee will determine whether further investigation is warranted and its decision will be forwarded to the involved institution in writing. If the investigation is continued, additional status reports will be provided to the institution in writing at least every six months thereafter until the matter is concluded (see Appendix C, NCAA Bylaw 32.2.2.4.2).

The letter of preliminary inquiry to a member institution seldom includes the names of complainants or individuals who have provided information regarding potential violations of NCAA legislation to the enforcement staff.

If the enforcement staff determines that an allegation or complaint warrants an official inquiry, the staff will determine its scope and thrust, and direct a letter to the chief executive officer of the member involved (with copies to the faculty athletics representative and the director of athletics of the member, and to the executive office of the conference of which the institution is a member), fully informing the chief executive of the matter under inquiry and requesting cooperation to the end that the facts may be discovered (see Appendix C, NCAA Bylaw 32.5.1). The written allegations identify the rule(s) violated, the details of the allegations and all sources of direct information concerning the matter.

By this letter, the chief executive officer of the member involved will be requested to disclose all relevant information, and the letter may require the appearance of the chief executive or a designated representative before the committee at a time and place that are mutually convenient, if such appearance is deemed necessary. If a member declines to meet with the committee after having been requested to do so, the member will not have the right to appeal either the committee's findings of facts and violations or the resultant penalty (see Appendix C, NCAA Bylaw 32.5.1.1).

An official inquiry will include a statement of the NCAA regulations alleged to have been violated, as well as the details of each allegation that, in the judgment of the enforcement staff, can be supported by sufficient information to reasonably expect that the Committee on

Infractions will find the violation to have occurred (see Appendix C, NCAA Bylaw 32.5.1.2).

The cover letter accompanying each official inquiry contains notification that the institution is requested to:

a. Read each allegation regarding a present or former institutional staff member, or a prospective, present or former student-athlete whose eligibility could be affected based on involvement in the alleged violation, to the identified individual;

b. Provide that individual the opportunity to submit in writing and orally any information the individual desires that is relevant to the allegation in question, and

c. Notify the individual in person, as well as in writing, that the individual and personal legal counsel (if any) may appear before the committee at the time it considers each allegation in which the individual is involved (see Appendix C, NCAA Bylaw 32.5.5).

The enforcement staff will notify athletics staff members and student-athletes at institutions other than the one under inquiry, whose employment or eligibility could be affected, of the allegations in which they are named. A copy of such notification is forwarded to the chief executive officer of the institution that employs such a staff member or in which the student is enrolled. All such individuals may investigate the charges and submit responses to the Committee on Infractions, and the institution under inquiry shall provide a copy of pertinent portions of its response to each individual who attended the committee's hearing in the case.

7. Explain what discovery rights an institution or individual is entitled to prior to a hearing, specifically:

a. Is the accused allowed to inspect each document or item of testimony that will be introduced by the enforcement staff at the infractions hearing? When is information provided to the institution?

b. When does the NCAA notify the institution of the names of witnesses that are to be called by the enforcement staff at the infractions hearing?

c. Is there a right to a pre-hearing confrontation and cross examination of any witness by the accused?

Response

The NCAA enforcement procedures provide that the NCAA staff and the involved parties (i.e., institution, former or current staff members, or student-athletes and the NCAA) conduct separate investigations of specific allegations, as set forth in the official inquiry, in order to develop as much information as possible concerning the issues in question

and for review by the Committee on Infractions. This procedure is designed to place responsibility for investigating the facts on all parties in an effort to assist the Committee on Infractions in determining appropriate judgments, it being understood that the burden of proof for any violation rests with the enforcement staff.

After a letter of official inquiry is sent to an institution or involved parties, the enforcement staff provides to the institution and the involved parties the identity of all individuals upon whom the staff intends to rely in presenting the case. Additional individuals or additional regulations that are identified subsequent to the submission of an official inquiry also are reported to the institution and involved parties promptly, and in all cases, prior to the institution's appearance before the committee (see Appendix C, NCAA Bylaw 32.5.1.3).

After an institution and involved parties have submitted their written responses to an official inquiry, in a case involving an alleged major violation, a series of prehearing conferences are held with representatives of the institution and the involved individuals, and at that time, the involved parties may review memorandums, exhibits and documents that the enforcement staff will utilize in presenting its case to the Committee on Infractions concerning allegations involving them [see Appendix C, NCAA Bylaw 32.5.10-(b)].

It is during the prehearing conferences with the involved parties that the enforcement staff reviews with the institution and involved individuals the information that the staff intends to rely upon during the hearing. Further, during prehearing conferences, issues that remain in dispute are reviewed, and involved individuals may make suggestions regarding additional investigation or interviews that should be conducted by the institution and the enforcement staff jointly to resolve an issue. Allegations that the enforcement staff intends to withdraw based on the information developed also are identified [see Appendix C, NCAA Bylaw 32.5.10-(c).]

Subsequent to the prehearing conferences, the hearing before the Committee on Infractions is held. During this meeting, all involved parties will present information, and the committee will have read the written responses of the institution and other parties. The enforcement staff submits a written summary of the issues remaining in each case to all parties and the Committee on Infractions just prior to the hearing, but no additional information will be provided to the Committee by the enforcement staff until the hearing itself [see Appendix C, NCAA Bylaw 32.5.10-(a).]

Hearing Process

8. Describe the make-up and functioning of the Infractions Committee, including:

   a. How are its members chosen?

   b. Describe the format and content of training provided to new Committee members.

Response

In order for the planning committee to better understand the function of the NCAA Committee on Infractions, a brief overview of the Association might prove beneficial. The NCAA is a voluntary association of more than 1,000 institutions, conferences, organizations and individuals devoted to the sound administration of intercollegiate athletics.

The NCAA's final authority and governing body is its annual Convention held in January. Each institution and qualified conference member holds one vote on Convention issues.

The 46-member NCAA Council establishes and directs the Association's policy between Conventions. Members of the Council include the president and secretary/treasurer, 22 Division I representatives, and 11 each from Divisions II and III. All are elected by the membership at the annual Convention. The Council acts as a single body to deal with overall policy and interests that involve all divisions, but Council members from each division also compose the Division I, II and III steering committees, which consider and act upon matters relating only to their divisions. A two-thirds vote of the full Council can overturn a steering committee action. In addition to the steering committees, there are four Council subcommittees.

The NCAA Executive Committee, which includes the president, secretary/treasurer and three division vice-presidents among its 14 members, transacts NCAA business concerning financial matters and oversees its championships. The five officers are elected at the Convention and the others by the Council.

Also reporting to the Executive Committee are the Division I, II and III championships committees and three Executive Committee subcommittees.

Forty-four chief executive officers, 22 from Division I and 11 each from Divisions II and III, constitute the Presidents Commission. The Commission, whose members are elected by vote of the chief executive officers of member institutions, regularly reviews Association activities, studies major intercollegiate athletics issues and recommends action on those issues. The Commission has the authority to propose legislation directly to an NCAA Convention and to direct roll-call votes.

Committees form the core of the Association. They develop policy by channeling reports and recommendations through the Council, steering committees or Executive Committee to the annual Convention. There are

currently 23 general committees; six Convention committees; eight sports committees with rules-making and championship(s) responsibilities; 28 sports committees with tournament responsibilities only, and six separate rules committees. Special committees often are appointed by the Council and Executive Committee to undertake specific assigned projects. Currently, there are eight such committees.

Including the Council, Executive Committee and Presidents Commission, there are approximately 870 positions on the NCAA's 89 committees.

The Council appoints members to the Committee on Infractions, which is responsible for the administration of the NCAA enforcement program. A potential member of the Committee on Infractions is nominated to the Council, and the Council in turn votes on that nomination.

The committee is composed of six members, at present or previously on the staff of an active member or member conference of the Association, and one individual serves as the chair of the Committee on Infractions. Two positions are allocated for men, two allocated for women and two unallocated (see Appendix C, NCAA Bylaw 19.1.1).

A member of the committee may serve a three-year term, and a member may be reappointed but may not serve more than nine years on the committee (see Appendix C, NCAA Bylaw 19.1.1.3).

The duties of the Committee on Infractions are the following:

a. Consider complaints that may be filed with the Association charging the failure of any member to maintain the academic or athletics standards required for membership, or the failure of any member to meet the conditions and obligations of membership in the Association;

b. Formulate and revise in accordance with the requirements of Bylaw 19.2 a statement of its established operating policies and procedures, including investigative guidelines;

c. Determine facts relating to alleged violations and fine violations of NCAA rules and requirements;

d. Impose an appropriate penalty or show-cause requirement on a member found to be involved in a major violation or, upon appeal, on a member found to be involved in a secondary violation, or recommend to the Council suspension or termination of membership, and

e. Carry out any other duties directly related to the administration to the NCAA's enforcement program (see Appendix C, NCAA Bylaw 19.1.3).

Members of the NCAA Committee on Infractions traditionally and predominantly consist of individuals who have expertise in regard to intercollegiate programs and the administration of those programs.

The current Committee on Infractions members are Alan Williams, professor of history at the University of Virginia (chair); Milton Schroeder,

professor of law at Arizona State University; Beverly Ledbetter, university legal counsel at Brown University; David Swank, dean of the law school at the University of Oklahoma, and Yvonne Slatton, professor of physical education at the University of Iowa.

The committee meets five to seven times a year. The meetings are three to four days in duration, and during those meetings, the committee holds hearings with member institutions and involved individuals, and also discusses a variety of agenda items that relate to enforcement.

A new committee member usually observes a Committee on Infractions meeting prior to participating as a member. The committee members are appointed to the Committee on Infractions based upon consideration of their legal background, experience and knowledge relating to intercollegiate athletics, geographic location, and reputation for integrity.

9. In the review of information received from the institution and from the enforcement staff, how does the Committee determine facts in a case, and how does the Committee discern between factual evidence and hearsay or unsubstantiated testimony?

Response

Prior to an institutional hearing, the only information the Committee on Infractions receives is the letter of official inquiry sent to the institution and to involved parties, and the written response(s) of the institution and involved parties. In presenting information during the hearing, and as evidence for consideration by the Committee during an institutional hearing, the enforcement staff presents only information that can be attributed to individuals who are willing to be identified. Information obtained from individuals not willing to be identified will not be relied upon by the committee in making findings of violations (see Appendix C, NCAA Bylaw 32.6.5.5.1).

During the presentation of information regarding a potential violation, the committee reviews information from a variety of sources that have been interviewed by the enforcement staff, the institution or involved parties during the course of an investigation. During the enforcement staff's presentation, the staff states to the committee whether information provided by individuals has been corroborated, substantiated or verified in some fashion. If the information provided to the enforcement staff has not been corroborated, that information too is presented to the committee. A full description of such information then is stated for the committee's review. The institution and individuals present offer their reactions also.

The committee determines if a violation of NCAA legislation occurred if the information presented to it during the institutional hearing is information that is credible, persuasive and of a kind upon which reasonably prudent persons rely in the conduct of serious affairs (see Appendix C, NCAA Bylaw 32.6.6.2).

In reviewing information during an institutional hearing, the committee, at the discretion of any of its members, may question representatives of the member institution or the enforcement staff, as well as any other persons appearing before it, in order to determine the facts of the case. Further, under the direction of the committee, questions and information may be exchanged between and among all parties participating in the hearing (see Appendix C, NCAA Bylaw 32.6.5.7).

10a. As part of the hearing process, does the NCAA want subpoena power? If not, explain why such power is not sought.

Response

As previously stated to the planning committee, the NCAA is a voluntary association of approximately 800 four-year colleges and universities, and 200 related organizations located in Overland Park, Kansas. The NCAA is engaged in the promotion and regulation of intercollegiate athletics. Under the conditions and obligations of membership in the NCAA, all representatives of member institutions are obligated to cooperate fully with the NCAA enforcement staff, Committee on Infractions and Council to further the objectives of the Association and its enforcement program. As noted in legislation adopted by the membership, the Enforcement Policies and Procedures are an essential part of the intercollegiate athletics program of each member institution, and require full and complete disclosure by all institutional representatives of any relevant information requested by the NCAA enforcement staff, Committee on Infractions or Council during the course of an inquiry. The NCAA Enforcement Policies and Procedures are guided under the cooperative principle established and adopted by the NCAA membership. This cooperative principle is not intended to be an adversarial process, but is intended to be a process in which the NCAA enforcement staff and the institution cooperate in the development of as much information as possible for the consideration of the Committee on Infractions.

Because the enforcement process is administrative in nature, the functions of the enforcement arm of the Association have been delegated to separate actors. Fact-seeking and rule-review responsibilities have been assigned codependently to the enforcement department staff and institution, which is completed through two investigations (i.e., one by the NCAA and one by the institution). Information gathered through the investigative process then is provided to the Committee on Infractions, which acts in its capacity as a fact determiner and punitive body.

A primary problem in regard to subpoenas arises through the fact that intercollegiate athletics has taken on national, even international, aspects. Athletics departments recruit student-athletes from all over the United States and the globe, and have representatives of their athletics interests and boosters all around the country. Many current infractions cases involve information developed from individuals located throughout the United States, many living in areas outside of any one state's borders and legal jurisdiction in which an NCAA member institution is situated. The effect of subpoena power that is provided on a state-to-state

basis disproportionately would affect individuals and institutions located in such states. It would be difficult to enforce any subpoena issued as a result of one particular state's grant of power to compel testimony of individuals located outside of the granting state's borders. These circumstances would inhibit the effect of any grant of subpoena power to the NCAA by a state.

Concomitant to the limited effectiveness of a subpoena issued the NCAA as a result of a state's grant of power for testimony of individuals residing outside of the jurisdiction of that state is the fact that the NCAA has in place legislation that requires many of those participants central to an infractions case to provide information to the enforcement staff, member institution and Committee on Infractions.

Thus, student-athletes, coaches, athletics administrators and an institution's president, in fact, all institutional staff members, must cooperate in the investigation of athletics matters, and are under an ethical obligation to provide truthful and accurate information, subject to sanctions by the Committee on Infractions [see NCAA Bylaws 10.1-(a), 10.1-(d), 19.01.2 and 19.4.2.1-(e)-(1-5)]. Representatives of an institution's athletics interests, or boosters, are under a similar obligation to cooperate and provide truthful information, subject to sanctions [see NCAA Bylaws 4.2.1-(e)-(3) and 19.4.2.6, and NCAA Administrative Bylaw 32.3.11].

The aforementioned concerns have not broached other questions surrounding a state's grant of subpoena power to the NCAA regarding: the added cost to the enforcement process and which party would absorb these expenses accompanying testimony by subpoenaed witnesses; the effect subpoena power would have on one of the Association's most important investigative tools -- confidentiality; the resultant impediments in future investigations, and any new legal vulnerability that would be absorbed by the Association upon reviewing such a tool.

b. If subpoena power is granted to the NCAA by a state legislature, would the NCAA agree to provide confrontation and cross-examination to an institution under investigation?

Response

The main thrust of this question concerns the ability of an institution and institutional personnel to question and confront those individuals who provided information relevant to an NCAA inquiry.

Member institutions and individuals involved in infractions cases already are provided with an opportunity to review relevant information, discover the identity of witnesses, question them and gather statements prior to any hearing before the Committee on Infractions (see NCAA Bylaws 32.3.3, 32.3.6, 32.3.9, 32.3.10, 32.5.1.3, 32.5.3 and 32.5.10). If the question assumes that such cross-examination must occur in the hearing conducted by the Committee on Infractions, subpoena power on a state-by-state basis would be ineffective in achieving that goal. If

individual states pass laws affecting NCAA enforcement policies and procedures (specifically if subpoena power is granted for institutions and individuals that are located in some states and not in others), member institutions affected by subpoena power would not be subject to the same NCAA enforcement procedures that would affect institutions in states without such legislation.

11a. Why does the NCAA refuse to allow an accused institution to make an official transcript of its hearing through electronic means or a court reporter?

Response

The NCAA, through its voting membership, has adopted legislation in its enforcement policies and procedures that places emphasis on the importance of confidentiality throughout the processing of an infractions case. Pursuant to adopted legislation by the membership, proceedings of institutional hearings are tape recorded by the Committee on Infractions. No additional verbatim recording of these proceedings is made. An institution is not provided the committee's recording or a copy of the transcript of the hearing. However, the institution may review the tape recording, it being understood that a verbatim transcript of the recording not be taken during such a review. Involved individuals who are named in an allegation or who are eligible to attend an institutional hearing and who were involved in findings of violations also may review that portion of the tape recording involving them, it also being understood that a verbatim transcript of the recording may not be taken during such a review (see Appendix C, NCAA Bylaw 32.6.5.8).

b. Following an infractions hearing, what information is provided to the accused institution and where is it provided?

Response

Following an institutional hearing, the committee, without prior public announcement, is obligated to submit promptly an infractions report, which sets forth its findings and penalty to be imposed, to the chief executive officer of the institution (with copies to those individuals receiving copies of the official inquiry) that has been subject to the official inquiry.

The infractions report(s) of the Committee on Infractions and Council contain a consolidated statement of all penalties, corrective actions, requirements, and other conditions imposed upon a member institution found in violation of NCAA legislation. The statement of such actions include but are not limited to the findings of fact, penalties imposed upon the institution, eligibility rules to be applied, applicable executive regulations, the adjustment of individual and team standings in

NCAA championship events, and the request for the return of any awards and net receipts received for participation in an NCAA championship.

The committee's infractions report is forwarded to the involved institution by overnight mail service, and the enforcement staff must confirm receipt by the institution in order that the 15-day appeal period applicable to this report may be established (see Appendix C, NCAA Bylaws 32.7.1-(b) and 32.7.1-(c)].

12. What is the NCAA's conflict of interest policy for Infractions Committee members and enforcement staff members regarding a pending investigation and/or hearing?

Response

Under the NCAA Enforcement Policies and Procedures, any member of the Committee on Infractions or Council who is directly connected with an institution under inquiry may not take part in any NCAA proceedings connected with the case before the committee or the Council (see Appendix C, NCAA Bylaw 32.1.3).

Further, a member of the committee or the Council who is prohibited from participating in any NCAA proceedings may not attend a Committee on Infractions hearing involving the member's institution unless specifically requested by the committee to be present as a witness. In addition, committee members traditionally have recused themselves from a hearing that affects another member of a playing conference of the committee member's institution.

No conflict of interest policy has been adopted for enforcement staff members, although any individual who is unable to consider information objectively or who has a personal relationship that would cause personal discomfort during the processing of a case would not be assigned such a case.

13. In addition to testimony by coaches and student-athletes, can an accused institution bring forward additional witnesses to provide relevant testimony? Are there any restrictions in this process?

Response

Live witnesses other than the representatives of the institution under inquiry, present and former athletics department staff members who are involved, and prospective and enrolled student-athletes who can be affected do not appear in person at the hearing. However, statements by such witnesses are presented, and are subject to review and investigation by all parties affected prior to the hearing.

Further, any oral or documentary information may be received by the committee, but the Committee may exclude information that it determines to be irrelevant, immaterial or unduly repetitious (see Appendix C, NCAA Bylaw 32.6.5.5).

14. Does the NCAA have a statute of limitations policy on the resolution of charges against a member institution?

Response

A statute of limitations is provided for as adopted by the membership in the NCAA's enforcement policies and procedures. Specifically, allegations included in a letter of official inquiry must be limited to possible violations occurring not earlier than four years before the date the notice of preliminary inquiry was forwarded to the institution. However, there is an exception to the four-year limitation. This exception involves allegations affecting the eligibility of a current student-athlete; allegations in a case in which information is developed to indicate a pattern of willful violations on the part of the institution or individual involved, which began before but continued into the four-year period and, finally, allegations that indicate a blatant disregard for the Association's fundamental recruiting, extra-benefit, academic or ethical conduct regulations, or that involve an effort to conceal the occurrence of the violation. In the latter example, the enforcement staff will have a one-year period after the date information concerning the matter becomes available to the NCAA to investigate and submit to the institution an official inquiry concerning the matter (see Appendix C, NCAA Bylaw 32.5.2).

15a. Does the NCAA believe that certain past infractions hearings may have been unfair and/or resulted in unfair sanctions?

Response

No. It also is important to emphasize to the planning committee that the NCAA membership itself continues to review all issues that affect the Association and intercollegiate athletics, as evidenced by the most recent NCAA 1991 NCAA Convention where NCAA Executive Director Richard D. Schultz announced an in-depth study of the NCAA enforcement program during the ensuing year. Specifically, the NCAA Council approved Mr. Schultz's request for the study and directed the Administrative Committee to appoint a special committee to begin work immediately. In Mr. Schultz's "State of the Association" address to the membership, he emphasized that the study represents an ongoing attempt to refine and improve all NCAA procedures, and does not reflect unhappiness with the current program. In addition, any legitimate concern or change is subject to review at any annual Convention and some modification or change is considered almost every year.

b. If question 15a is true, explain specifically what changes have been made in the Infractions Committee hearing process to safeguard accuracy and fairness.

Response

The enforcement program is an evolving program over a 39-year period. Changes constantly are being considered and made. Examples include:

1. Whenever possible, individuals who have reported to the enforcement staff information that is used in an infractions case should be given the opportunity to review the information set forth in the investigator's report of the interview and be provided the opportunity to make additions or corrections (see Appendix C, NCAA Bylaw 32.3.9).

2. Individuals and institutions are entitled to be represented by legal counsel.

3. An institution is advised of all individual witnesses and information upon which the staff intends to rely during an institutional hearing.

4. The primary NCAA investigator in an infractions case is made available to the involved institution on request to discuss the development of its response to the letter of official inquiry (see Appendix C, NCAA Bylaws 32.3.5, 32.5.1.3 and 32.5.3).

5. The provisions regarding prehearing conferences are relatively new.

6. The most recent change involves the release of the Committee on Infractions' expanded report (a report prepared when a case is appealed) to the public.

c. Would the NCAA be opposed to a PUBLIC infractions hearing that would allow the public to gain insight into the Association and its enforcement policies?

Response

The issue of whether the public should have access to an NCAA infractions hearing would be an issue that the NCAA membership would have to approve by a change in the current procedures. It appears to be the general sense of the membership that the current NCAA enforcement policies and procedures should remain confidential to the extent possible and that public hearings would create a "chilling effect" on the enforcement department's ability to develop information and process infractions cases. Further, public hearings create additional issues in regard to the interests of individuals who, to this point, may not attend hearings and publicity regarding reluctant sources of information who would not otherwise be identified to the public.

Sanctioning Process

16. How does the committee ensure consistency of penalties/sanctions for similar rule violations? Would the NCAA be opposed to the establishment of a standard set of penalties for specific rule violations?

Response

As a result of the NCAA Convention conducted in 1985, the Association enacted legislation that directed the Committee on Infractions to impose minimum prescribed penalties for violations in which the committee had found the institution guilty of secondary and major violations.

NCAA Bylaw 19.4.2.2 states that the minimum penalty for a major violation subject to exceptions authorized by the Committee on Infractions in unique cases, on the basis of specifically stated reasons, shall include all of the following: (a) a two-year probationary period (including a periodic in-person monitoring system and written institutional reports); (b) the elimination of all expense-paid recruiting visits to the institution in the involved sport for one recruiting year; (c) a requirement that all coaching staff members in the sport be prohibited from engaging in any off-campus recruiting activities for one recruiting year; (d) a requirement that all institutional staff members determined by the committee to have been knowingly involved in or condoning a major violation be subject to termination of employment to suspension without pay for at least one year, or to reassignment of duties within the institution to a position that does not include contact with prospective or enrolled student-athletes or representatives of the institution's athletics interests for at least one year; (e) one year of sanctions precluding postseason competition in the sport; (f) one year of television sanctions in the sport, and (g) institutional recertification that the current athletics policies and practices conform to all requirements of NCAA regulations.

Further, NCAA Bylaw 19.4.2 sets out several disciplinary measures that can singly or in combination be adopted by the committee (or the appropriate division steering committee on the Council on appeal) and imposed against an institution for major violations.

The intent of the NCAA penalty structure, as it currently is written, is designed to promote consistent, severe penalties for serious violations [reference: NCAA Bylaw 19.4.2.2, Minimum Prescribed Penalties].

17. In addition to coaches and student-athletes, describe sanctions that may be imposed and have been imposed on other individuals associated with a member institution, including presidents, administrators, athletic program boosters, etc.

Response

Under current NCAA legislation, the Committee on Infractions, after establishing involvement on the part of an institutional staff member in a major violation, can require an institution to "show cause" why the committee should not impose the prescribed minimum penalty for involvement of institutional staff members, including presidents, administrators and coaches employed by the institution, as noted in the prescribed minimum penalty legislation, Bylaw 19.4.2.2-(d).

NCAA Bylaw 19.02.1, states that a show-cause order is one that requires a member institution to demonstrate to the satisfaction of the Committee on Infractions (or Council subcommittee in the case of an appeal) why it should not be subject to a penalty (or additional penalty) for not taking appropriate disciplinary or corrective action against an institutional staff member or representative of the institution's athletics interests identified by the committee as having been involved in a major violation of NCAA legislation.

Specifically, per NCAA Bylaw 19.4.2.6, the Committee on Infractions can affect boosters or representatives of the university's athletics interests who have been found to have been involved in NCAA rule violations by directing the institution to disassociate the booster from its athletics programs. Specifically, the legislation states that disassociation of relations with a representative of an institution's athletics interests may be imposed on a permanent basis, for the duration of the applicable probationary period or for another specified period of time. When an institution is required to show cause why a representative of the institution's athletics interests should not be disassociated from its athletics programs, such disassociation shall require that the institution: (a) refrain from accepting any assistance from the individual that would aid in the recruitment of prospective student-athletes or the support of enrolled student-athletes; (b) not accept financial assistance for the institution's athletics programs from the individual; (c) ensure that no athletics benefit or privilege be provided to the individual that is not generally available to the public at large, and (d) take such other actions against the individual that the institution determines to be within its authority to eliminate the involvement of the individual in the institution's athletics program.

18a. Does the NCAA accept the proposition that the Association's punishment scheme focuses responsibility exclusively on an institution's athletic program, with little or no responsibility placed on the institution's president?

b. Has the committee ever sanctioned an institution's president for rule violations or where a lack of institutional control was found?

Response

a. The NCAA voting membership has not accepted the proposition that the Association's punishment focuses responsibility exclusively on

an institution's athletics department. In fact, this issue is addressed directly in the NCAA Constitution, Article 2, specifically Article 2.1.1, Responsibility for Control, which states: "It is the responsibility of each member institution to control its intercollegiate athletics program in compliance with the rules and regulations of the Association. The institution's chief executive officer is responsible for the administration of all aspects of the athletics program, including approval of the budget and audit of all expenditures."

Further, Article 2.1.2, Scope of Responsibility, states: "The institution's responsibility for the conduct of its intercollegiate athletics program includes responsibility for the actions of its staff members and for the actions of any other individual or organization engaged in activities promoting the athletics interests of the institution."

Additionally, NCAA Bylaw 30.3 states that chief executive officers (CEO's) of NCAA member institutions must submit to the NCAA national office not later than September 15 an annual certification of compliance in order for their institutions to be eligible to enter teams or individuals in NCAA-sponsored championships. The CEO must attest that specific conditions have been satisfied related to the following areas: rules education, compliance environment and commitment, employment of coaches, admissions, academic progress, financial aid (Division III only) and knowledge of rules violations. Additionally, a statement must be signed by each athletics department staff member (except for clerical personnel) attesting that the individual has reported any knowledge or involvement in any violations of NCAA legislation involving the institution.

The institutional eligibility certification is designed to ensure that the institution is in compliance with NCAA rules. The certification consists of two forms: the certification of compliance for institutions and the certification of compliance for staff members of athletics departments.

The form for the certification of compliance for institutions contains several statements addressing the areas of compliance stipulated in NCAA Bylaw 30.3. The form must be signed and dated by the institution's chief executive officer (signatures of designees are not accepted).

b. The Committee on Infractions, to date, has not found that an institution's president was involved in findings of major violations; however, the status of chief executive officer of a member institution does not exempt the president from NCAA Bylaw 19.02.1 (show-cause order), as the intent of the legislation applies the same for a the president of an institution as it does to a coach.

19a. How does banning current student-athletes from bowl and/or TV appearances effectively match the punishment with the offender when wrongdoers often have left the institution prior to sanctioning?

b. Would a monetary fine for the guilty institution not have the same effect of bowl appearance ban (i.e., loss of revenue) but allow athletes who are innocent of wrongdoing to compete and be rewarded, as appropriate?

Response

a. As addressed previously, the Committee on Infractions, upon findings of major violations, must impose minimum prescribed penalties per NCAA Bylaw 19.4.2.2. Under the current penalty structure of the NCAA, the Committee on Infractions does take into consideration that innocent student-athletes are affected by postseason and/or television sanctions. However, the NCAA holds the institution (which is an NCAA member) responsible for violations and in doing so, imposes penalties, which are designed to return competitive advantages and benefits gained through improper means and to ensure that the institution itself takes steps to avoid an environment that will condone violations in the future. The membership supports the view that without postseason and television sanctions, it would be too easy for the institution simply to rid itself of guilty parties and continue business as usual while enjoying the benefits achieved through improper means.

b. Monetary fines are not considered effective. In addition, fines cannot be levied equitably when considering the financial means and resources of various institutions. Further, some institutions simply could solicit funds from the same outside boosters who were involved in the violations to buy the institution's way out of difficulty. In fact, numerous institutions have proposed such a penalty when faced with sanctions. The membership considers postseason and television sanctions fundamental to the enforcement process, and coaches also advocate use of recruiting and scholarship limits as effective deterrents.

20. How does the NCAA define institutional control in regard to an institution's athletic program? What specific indices are used to determine a "lack of institutional control?"

Response

The NCAA does not have a specific definition for the term institutional control per se, but the principle of institutional control and responsibility is addressed in Article 2.1.1 of the NCAA Constitution, which states: "It is a responsibility of each member institution to control its intercollegiate athletics program in compliance with the rules and regulations of the Association. The institution's chief executive

officer is responsible for the administration of all aspects of the athletics program, including approval of budget and audit of all expenditures."

A finding of a lack of institutional control, which has been cited in several infractions cases, generally is a finding that the institution, for a variety of reasons, did not have the necessary checks and balances within its athletics department to ensure compliance with NCAA legislation. The areas generally cited by the Committee on Infractions as institutional control problem areas are: (a) administrative and eligibility certification procedures; (b) rules education, and/or (c) monitoring of compliance programs to ensure that the institution does have an effective monitoring program to discover potential problems or violations.

Under (a) above, "administrative procedures," the following areas have been addressed: (1) lack of control over certain procedures in or outside the athletics department (e.g., petty cash funds and initial eligibility certification); (2) failure of the university's administrators to follow established procedures; (3) frequent changes in the athletics department personnel that enhance the possibility of rule violations, and (4) lack of effective supervision of athletics administrators.

Under (b), "rules education," the Committee on Infractions has found that failure to educate the coaching staff and athletics department personnel about current NCAA legislation is not an acceptable excuse for rule violations. Also, the committee has found that the institution has the responsibility to educate staff members and representatives of the university's athletics interests about NCAA legislation, in particular recruiting and extra-benefit legislation.

Under (c), "monitoring of an athletics program and coaches," the committee has found that institutions operated an athletics program in an environment that is conducive to rule violations. Failure to monitor and respond to information that could involve NCAA rule violations when such information was available is not acceptable. Further, the delegating of monitoring responsibilities to individual coaches generally is not acceptable as it creates an environment to "pass the buck" to those who would have an interest seeking loopholes.

In short, the term "institutional control" essentially encompasses "the big picture," and addresses the mechanics and inner workings of a university's athletics department, including the university's established compliance procedures and programs, and their resultant effectiveness.

Appeals Process

21. Following sanctioning, explain the appeals process that is available to coaches, student-athletes and institutions?

Response

A member institution may appeal the committee's findings or the penalty, or both, to be considered by the appropriate division steering committee of the NCAA Council. The member institution's written notice of appeal of the committee's findings or the penalty, or both, must be received by the NCAA Executive Director not later than 15 calender days from the date the member institution received the committee's report. The member's notice of appeal must contain a statement of the date the committee's report was received by the chief executive officer and a statement indicating whether the institution desires to submit its appeal in writing only, or whether the institution will be represented before the appropriate division steering committee of the Council at the time the appeal is considered (see Appendix C, NCAA Bylaw 32.8.1).

In appealing the committee's findings, a member institution must state a basis for an appeal to be granted. Determinations of fact and violations arrived at by the Committee on Infractions will not be set aside on appeal, except upon showing that:

a. The committee's findings clearly are contrary to the evidence presented to the committee;

b. The facts found by the committee do not institute a violation of the Association's rules, or

c. A procedural error affected the reliability of the information that was utilized to support the committee's findings (see Appendix C, NCAA Bylaw 32.8.2).

Further, any current or former institutional staff member who is involved in a finding of a violation of ethical conduct or in other findings by the committee resulting in proposed disciplinary action against that individual and who exercises the opportunity to appeal any of the findings in question (subject to the conditions mentioned above) must submit a written notice of appeal through the member institution to the NCAA executive director not later than 15 calender days from the date the member institution received the committee's report. The individual and personal legal counsel may appear before the respective division steering committee of the Council at the time it considers the pertinent findings. The institution is requested to notify its current staff members, and the enforcement staff will notify all other individuals directly of the appeal opportunity (see Appendix C, NCAA Bylaw 32.8.3).

When an appeal is made by a member institution or institutional staff member, the Committee on Infractions is obligated to submit an expanded infractions report to the Council on each case that has been appealed. The expanded infractions report includes the following:

a. Violations of NCAA requirements or questionable practices in light of NCAA requirements, as determined by the committee;

b. A statement of the committee's proposed penalties;

c. A statement of the origin of the case;

d. Related factors appropriate for consideration in judgment of the case, and

e. Disciplinary or corrective actions taken by the institution or conference, or any other agency involved in the particular incident (see Appendix C, NCAA Bylaw 32.8.5).

If the institution or individual elects to be represented in person before the appropriate division steering committee, the institution or individual will be permitted a reasonable time to make its oral presentation to supplement the written appeal. The chair or another member of the Committee on Infractions will be permitted a like period to present orally the committee's report. If the appeal is in writing only, the committee's written report will be considered without an appearance by a committee representative, and finally, the appropriate division steering committee will act upon the member's appeal by majority vote of the members of the Appeal Board present and voting, and may accept the Committee's findings and penalties, alter either one or both, or make it's own findings and impose a penalty that it believes appropriate (see Appendix C, NCAA Bylaw 32.9.1).

The appropriate division steering committee of the Council will consider the statements and evidence presented, and at the discretion of any of its members may question representatives of the member institution or the Committee on Infractions, as well as any other persons appearing before it, in order to determine the facts related to the appeal. Further, under the direction of such steering committee, questions and information may be exchanged between and among all parties participating in the hearing (see Appendix C, NCAA Bylaw 32.9.2).

Any division steering committee decision in an infractions case will be considered final upon adjournment of the Council meeting during which the appeal was acted upon, except for the January pre-Convention Council meeting in which case the decision shall be considered final at the end of the Council session prior to the opening business session of the Convention (see Appendix C, NCAA Bylaw 32.9.4).

Determinations of fact and violations arrived at in the foregoing manner by the committee or by a division steering committee of the Council on appeal shall be final, binding and conclusive, and will not be subject to further review by the Council or any other authority of the Association (see Appendix C, NCAA Bylaw 32.9.5).

When the Committee on Infractions (or appropriate division steering committee) finds that there has been a violation of the Constitution or bylaws affecting the eligibility of a prospective or enrolled student-athlete, the institution involved and its conference(s), if any, should be notified of the violation and the name(s) of the student-athlete(s)

involved, it being understood that if the institution fails to take appropriate action, the involved institution should be cited to show cause under the Association's regular enforcement procedures why it should not be disciplined for failure to do so (see Appendix C, NCAA Bylaws 19.5.4.1).

When a prospective or enrolled student-athlete is determined to be ineligible as a result of involvement in a violation, the institution may appeal for restoration of eligibility immediately or at a time it believes appropriate. Eligibility appeals are acted upon by the director of eligibility in concert with the assistant executive director for enforcement, and appeals concerning this initial decision are considered by the Eligibility Committee for the division in which the institution holds membership and, if necessary, by the Subcommittee for Eligibility Appeals of the NCAA Council.

22a. On appeal, what were the considerations that led the Committee to modify sanctions against the University of Nevada, Las Vegas?

Response

See Appendix D for the supplemental report regarding the NCAA show-cause requirement to the University of Nevada, Las Vegas, which includes the Committee on Infractions' rationale for its decision..

22b. Does this decision establish a precedent for future sanction appeals?

Response

No, with the exception of the process applicable to a "show-cause" requirement that is imposed per Bylaw 9.4.2.1-(1).

22c. How does the NCAA respond to charges that similar attempts to appeal sanctions were not similarly reviewed nor acted upon?

Response

The University of Nevada, Las Vegas, did serve the sanctions imposed upon it (i.e., two years of postseason and television sanctions) when the case was concluded in 1977. The most recent action was a result of a "show-cause" requirement that also applied to the university in 1977 to suspend its head coach for two years or receive additional sanctions. Once the NCAA won the resultant court case with the coach who attempted to avoid any penalty, it was determined that the university still could not impose this penalty on its coach because a restraining order

remainded in effect against it. Accordingly, a hearing was conducted under the "show-cause" provision of the penalty structure resulting first in action to prohibit the men's basketball team at the university from participating in postseason basketball competition in the 1990-91 academic year, and after discovery of new information in the case, in postseason and television sanctions for 1991-92.

When a show-cause order is in place, that aspect of the penalty is subject to review at any time, and show-cause actions or penalties have been adjusted in numerous past cases.

General

23. Describe the NCAA's current disability insurance policies.

Response

See Appendix E, which outlines the current NCAA Exceptional Athlete Disability insurance program.

24. Does the NCAA favor the establishment of a plan to provide income to student-athletes from an equitable portion of the revenue generated from athletic events and TV, post-season and bowl appearance?

Response

The issue of whether the Association would favor a plan to distribute income to student-athletes from revenues generated from intercollegiate athletics contests would be one that the NCAA membership would have to initiate and vote upon at an annual Convention. At this point, there has been no concerted effort by the membership to initiate legislation on this point.

25. Describe substantive changes in NCAA policies and procedures addressed in the above questions that were approved at the 1991 NCAA Annual Convention.

Response

As outlined in the response for Question 15a, the NCAA membership continues to review all legislation regarding issues that affect the Association and intercollegiate athletics. The last complete review of the NCAA Enforcement Policies and Procedures was in 1985 when the membership passed legislation that set out harsher prescribed penalties for violations that were major in nature. As stated previously, NCAA Executive Director Richard D. Schultz has been authorized by the NCAA

Council to launch a study in 1991 that reviews the issues addressed in the above questions during the ensuing year. Specifically, the NCAA Council approved Mr. Schultz's request for that authorization and directed the Administrative Committee to appoint a special committee to begin its review of the NCAA Enforcement Policies and Procedures immediately.

/aj

APPENDIX B

Institutions Under NCAA Sanctions

32 Institutions Under NCAA Sanctions

ADELPHI U.
Violations: Improper certification of eligibility of a male basketball player; cash payments to athletes; unethical conduct by a former coach; lack of institutional control.
Penalties: No postseason play in 1989-90; limits on new scholarships; probation from July 1989 to July 1992.

ALABAMA A&M U.
Violation: Exceeding scholarship limit in men's soccer.
Penalty: No postseason play, indefinitely.

CLEMSON U.
Violations: Improper cash payments to football players; other minor violations.
Penalties: One booster disassociated; probation from June 1990 to June 1991.

CLEVELAND STATE U.
Violations: Improper recruiting in men's basketball; misleading N.C.A.A. investigators.
Penalties: No postseason competition through the 1989-90 season; no television appearances in 1988-89; probation from April 1988 to April 1991.

FLORIDA A&M U.
Violations: Improper benefits to women's tennis players, improper recruiting; unethical conduct by former coach.
Penalties: No postseason play in 1990-91; no new scholarships until August 1, 1992; probation from June 1990 to June 1992.

GRAMBLING STATE U.
Violations: Improper recruiting in men's basketball; unethical conduct by two coaches.
Penalties: Scholarships cut to 13 from 15 in 1989-90 and 1990-91; probation from August 1989 to August 1991.

■ **HAMPTON U.**
Violations: Allowing two academically ineligible football players to compete on the team; lack of institutional control.
Penalties: Public reprimand and censure; no post-season play after the 1991 football season; forfeiture of all football victories in 1986 and 1987 seasons; probation from January 1991 to January 1993.

HOUSTON BAPTIST U.
Violations: Improper recruiting in men's gymnastics; improper benefits to athletes; lack of institutional control; unethical conduct by head coach.
Penalties: University suspended the coach through the 1989-90 academic year; N.C.A.A. extended the coach's ban through 1990-91 and forced the university to forfeit records from 1987 through 1989; probation from April 1990 to April 1993.

MARSHALL U.
Violations: Improper loans and free off-campus housing given to men's basketball players and recruits; lack of institutional control; unethical conduct by former head coach.
Penalties: No preseason or postseason play in 1990-91, scholarships cut to 14 from 15 in 1990-91, and to 13 in 1991-92; paid campus visits cut to 12 from 15 in 1990-91; probation from March 1990 to March 1992.

MEMPHIS STATE U.
Violations: Excessive pay to a football player for minimal work; unethical conduct by the former coach.
Penalties: No postseason play in 1989-90; no televised competition in 1990; new scholarships cut to 21 from 25 in 1990-91; probation from August 1989 to August 1992.

■ **MIAMI U.**
Violations: Academic fraud (an improper grade given to a men's basketball player in a course taught by the team's former coach; unethical conduct by that coach.
Penalties: Team forced to forfeit eight victories from 1988-89 season, when it played with the ineligible player; reprimand and censure; probation from January 1991 to January 1993.

NORTH CAROLINA STATE U.
Violations: Improper benefits to men's basketball players; lack of institutional control.
Penalties: University cut to 12 from 15 the number of basketball scholarships it will give in 1990-91 and 1991-92, and barred coaches from off-campus recruiting; N.C.A.A. banned basketball team from postseason competition in 1989-90 and placed the university on probation from January 1990 to January 1992.

NORTHWESTERN STATE U. (LA.)
Violations: Cash given to men's basketball recruits and players by coaches; other students twice took standardized admissions tests in place of basketball recruits; lack of institutional control.
Penalties: No postseason play in 1990-91 and 1991-92; no televised play in 1990-91; expense-paid visits for basketball recruits reduced from 15 to 8 in 1990-91 and 12 in 1991-92; scholarships cut in 1990-91 to 13 from 15, and initial scholarships limited to two in 1991-92 and three in 1992-93; probation from October 1990 to October 1993.

OKLAHOMA STATE U.
Violations: Improper payments to football players; improper inducements to recruits; lack of institutional control.
Penalties: No postseason football competition through 1991-92; no televised play in 1989-90; football scholarships cut to 20 from 25 through 1991-92; probation from January 1989 to January 1993.

ROBERT MORRIS COLLEGE (PA.)
Violations: Improper financial aid to a men's basketball player; lack of institutional control.
Penalties: No postseason or televised play in 1990-91; loss of two basketball scholarships; probation from June 1990 to June 1992.

SOUTHEASTERN LOUISIANA U.
Violations: Improper benefits to men's basketball players; improper recruiting; lack of institutional control.
Penalties: University suspended the 1989-90 season for financial reasons; N.C.A.A. banned scholarships in 1989-90, and cut them to 7 from 15 in 1990-91; paid recruiting visits in 1990-91 cut to 14 from 18; two coaches barred from off-campus recruiting until July 31, 1990; probation from October 1989 to October 1994.

SUNY COLLEGE AT PLATTSBURGH
Violations: Improper benefits to men's ice-hockey players by boosters; lack of institutional control.
Penalties: No postseason play in 1990-91; forfeiture of championship records from 1986 to 1988; probation from April 1990 to April 1992.

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U. OF CINCINNATI

Violations: Improper financial aid to athletes; lack of institutional control.

Penalties: No postseason play in 1988-89 in football and men's basketball; loss of two basketball scholarship in 1989-90, and one in 1990-91; new football grants cut to 21 from 25 in 1990-91, and to 22 in 1991-92; probation from November 1988 to November 1991.

U. OF FLORIDA

Violations: Improper benefits to a men's basketball player and unethical conduct by the former head basketball coach; improper benefits to a football player, improper salary supplements given to assistant football coaches, and unethical conduct by former head football coach.

Penalties: No postseason play in football in 1990-91; basketball scholarships cut to 13 from 15 in 1991-92, and to 14 in 1992-93; probation for both teams from October 1990 to October 1992.

U. OF HOUSTON

Violations: Cash payments to football players; improper recruiting; unethical conduct by nine former coaches; lack of institutional control.

Penalties: No postseason play in 1989-90 and 1990-91; no televised play in 1989-90; probation from December 1988 to December 1991.

■ **U. OF ILLINOIS AT URBANA-CHAMPAIGN**

Violations: Lack of institutional control; improper benefits to men's basketball players; improper recruiting.

Penalties: No postseason basketball play in 1990-91; no expense-paid campus visits for basketball recruits and no off-campus recruiting by coaches in the 1991 calendar year, and only two coaches allowed to recruit off the campus in 1992; initial basketball scholarships limited to two in 1991-92 and 1992-93; probation from November 1990 to November 1993.

U. OF KANSAS

Violations: Improper benefits to a men's basketball recruit; lack of institutional control.

Penalties: No postseason play in 1988-89; loss of one scholarship in 1989-90; probation from November 1988 to November 1991.

U. OF KENTUCKY

Violations: Cash sent to a prospective men's basketball player; cheating on a standardized test; competition in postseason play with an ineligible athlete; unethical conduct.

Penalties: No postseason play and limits on when the basketball team can begin play in 1989-90 and 1990-91 seasons; no televised competition in 1989-90; new scholarships limited to three through 1990-91; the player to whom money was sent was barred from playing for Kentucky; the player who cheated was barred from N.C.A.A. competition; probation from May 1989 to May 1992.

U. OF MARYLAND AT COLLEGE PARK

Violations: Lack of institutional control; improper benefits to recruits; sales of complimentary tickets by players; unethical conduct by four former coaches and staff members.

Penalties: No postseason play in 1990-91 and 1991-92; no televised play in 1990-91; loss of two scholarships through 1991-92; forfeiture of N.C.A.A.-tournament receipts; probation from August 1990 through August 1993.

U. OF MINNESOTA--TWIN CITIES

Violations: Improper benefits to men's basketball players; lack of institutional control.

Penalties: Continuing probation.

■ **U. OF MISSOURI AT COLUMBIA**

Violations: Lack of institutional control; improper financial aid to a male basketball player declared ineligible under Proposition 48; improper recruiting; improper loans to athletes; unethical conduct by two assistant coaches, who resigned effective March 1990.

Penalties: No postseason play in 1990-91; no expense-paid campus visits for recruits in the 1991 calendar year; only one coach allowed to recruit off the campus in 1991; initial basketball scholarships cut to one in 1991-92 and two in 1992-93; probation from November 1990 to November 1992.

■ **U. OF NEVADA AT LAS VEGAS**

Violations: Recruiting violations in men's basketball found by the infractions committee in 1977.

Penalty: No postseason or televised competition in the 1991-92 academic year.

U. OF OKLAHOMA

Violations: Cash payments to football players; improper offers to recruits; unethical conduct by three staff members; lack of institutional control.

Penalties: No postseason play in 1989-90 and 1990-91; loss of seven new football scholarships in 1990-91; expense-paid campus visits cut to 50 from 85 in 1990-91; two coaches barred from off-campus recruiting; probation from December 1988 to December 1991.

U. OF SOUTH CAROLINA

Violations: Lack of institutional control, but no major breaches of rules.

Penalties: An earlier probation, due to expire in March 1989, was extended at least through February 1991 to give the university time to put its monitoring program into effect.

■ **U. OF TEXAS--PAN AMERICAN**

Violations: Cash and other gifts given to women's basketball recruits by the head coach; lack of institutional control.

Penalties: No postseason or live-television games in women's basketball in 1990-91; no off-campus recruiting through August 1991; paid recruiting visits cut to 10 from 18 in 1990-91; women's basketball coach barred from using a complimentary car or participating in any basketball camp until August 31, 1991; probation from November 1990 to November 1991.

UPSALA COLLEGE

Violations: Cash payments and improper loans made to men's basketball players; improper financial aid; improper recruiting; lack of institutional control.

Penalties: No postseason basketball competition in the 1990-91, 1991-92, and 1992-93 academic years; games limited to 22 from 26 in the 1990-91 season; two boosters disassociated from program; alumni barred from recruiting through 1991-92; probation from August 1990 to August 1995.

WEST TEXAS STATE U.

Violations: Improper benefits to men's basketball players; unethical conduct by former coaches; lack of institutional control.

Penalties: No paid on-campus visits in 1989-90; scholarships cut to 10 from 13 through 1990-91; probation from January 1989 to January 1992.

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APPENDIX C

Nebraska Collegiate Athletic Association Procedures Act

LEGISLATIVE BILL 397

Approved by the Governor February 1, 1990

Introduced by Chambers, 11; Dierks, 40; Lindsay, 9

AN ACT relating to athletics; to adopt the Nebraska Collegiate Athletic Association Procedures Act.

Be it enacted by the people of the State of Nebraska,

Section 1. This act shall be known and may be cited as the Nebraska Collegiate Athletic Association Procedures Act.

Sec. 2. The Legislature hereby finds and declares that:

(1) The National Collegiate Athletic Association is a national unincorporated association consisting of public and private colleges and universities and is a private monopolist that controls intercollegiate athletics throughout the United States;

(2) The National Collegiate Athletic Association adopts rules governing member institutions' admissions, academic eligibility, and financial aid standards for collegiate athletes;

(3) A member must agree contractually to administer its athletic program in accordance with National Collegiate Athletic Association legislation;

(4) National Collegiate Athletic Association rules provide that association enforcement procedures are an essential part of the intercollegiate athletic program of each member institution;

(5) The National Collegiate Athletic Association exercises great power over member institutions by virtue of its monopolistic control of intercollegiate athletics and its power to prevent a nonconforming institution from competing in intercollegiate athletic events or contests;

(6) Substantial monetary loss, serious disruption of athletic programs, and significant damage to reputation may result from the imposition of penalties on a college or university by the National Collegiate Athletic Association for what the association determines to be a violation of its rules; and

(7) Because of such potentially serious and far reaching consequences, all proceedings which may result in the imposition of any penalty by the National Collegiate Athletic Association should be subject to the requirements of due process of law.

Sec. 3. Every stage and facet of all proceedings of a collegiate athletic association, college, or university that may result in the imposition of a penalty for violation of such association's rule or legislation shall comply with due process of law as guaranteed by the Constitution of Nebraska and the laws of Nebraska.

Sec. 4. No collegiate athletic association shall impose a penalty on any college or university for violation of such association's rule or legislation in violation of the due process requirements of the Nebraska Collegiate Athletic Association Procedures Act.

Sec. 5. No collegiate athletic association shall impose a penalty on any college or university for failure to take disciplinary action against an employee or student for violation of such association's rule or legislation in violation of the due process requirements of the Nebraska Collegiate Athletic Association Procedures Act.

Sec. 6. A collegiate athletic association that violates the Nebraska Collegiate Athletic Association Procedures Act shall be liable to the aggrieved college or university in an action at law, suit in equity, or other proper proceeding for redress. No penalty shall be threatened against or imposed upon an aggrieved college or university for seeking redress pursuant to this section.

Sec. 7. In addition to costs and a reasonable attorney's fee, a collegiate athletic association that violates the Nebraska Collegiate Athletic Association Procedures Act shall be liable to the aggrieved college or university for an amount equal to one hundred percent of the monetary loss per year or portion of a year suffered during the period that any monetary loss occurs due to a penalty imposed in violation of the act. For purposes of calculating monetary loss, one hundred percent of the yearly loss shall be equal to the gross amount realized by the affected athletic program during the immediately preceding calendar year.

Sec. 8. A collegiate athletic association, college, or university which subjects, or causes to be subjected, any employee or student to a penalty in violation of the Nebraska Collegiate Athletic Association Procedures Act shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. No penalty shall be threatened against or imposed upon an aggrieved party for seeking redress pursuant to this section. In addition to any other relief granted, an aggrieved employee or student shall be awarded costs and a reasonable attorney's fee.

Sec. 9. Any penalty imposed by any collegiate athletic association, college, or university shall be subject to judicial review in the district court.

Sec. 10. The remedies provided in the Nebraska Collegiate Athletic Association Procedures Act are cumulative and in addition to any other remedies provided by law.

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APPENDIX D

The Role of Faculty in the Governance of College Athletics

THE ROLE OF FACULTY IN THE GOVERNANCE OF COLLEGE ATHLETICS

A Report of the Special Committee on Athletics

In October 1987, the Executive Committee of the Council authorized appointment of a Special Committee on Athletics to examine the role of the faculty regarding intercollegiate athletics programs. Turning to the 1966 Statement on Government of Colleges and Universities (jointly formulated by the AAUP, the American Council on Education, and the Association of Governing Boards of Universities and Colleges) for applicable Association-supported standards, the Special Committee prepared the following report, which outlines the general principles underlying faculty responsibility to ensure the integrity of the student athlete's educational experience and the procedures through which a faculty should exercise that responsibility.

This is not the first time that the Association has examined problems concerning intercollegiate sports programs. As far back as 1926, it issued "Intercollegiate Football: Report by Committee G" (AAUP Bulletin 12, [1926]), and the Thirty-eighth Annual Meeting in 1952 approved a statement urging faculties to assume their proper academic oversight responsibilities and condemning payment of money to student athletes.*

The current report, with a dissenting opinion from a committee member, is being published for the information of the profession and with a request for comments from chapters, conferences, and other interested parties. Committee T on College and University Government has reviewed the report and has approved its publication, together with the dissent, for this purpose. In view of the seriousness, persistence, and complexity of the problems inherent in the increasing commercialization of intercollegiate athletics, comments are strongly encouraged. They should be addressed to the Special Committee on Athletics through the Association's Washington Office.

**Committee G was the Committee on Methods of Increasing the Intellectual Interest and Raising the Intellectual Standards of Undergraduates.*

College athletics in this country is in continuing crisis. Even after several years of proposals and discussions of reform, the gains achieved are quite modest.

Earlier inquiries revealed significant educational neglect in major college basketball and football programs, with shockingly low graduation rates at some institutions. Among the dismal revelations were findings that fewer than one in ten basketball players graduated at a large research university in the Midwest and that no black basketball players graduated in a ten-year period at a southern regional state university. Graduation rates of less than 30 percent were common. Admissions standards often seemed guided solely by athletic concerns. A more recent study revealed that 35 of 97 major basketball programs had graduation rates of 0 to 20 percent. These results occurred despite the existence of extensive tutoring efforts. In addition, the integrity of universities was repeatedly compromised when boosters and alumni—and not infrequently members of the institution's staff—improperly paid money to athletes.

Despite the attention given to intercollegiate sports reform in the media and elsewhere, there is ample evidence that the problems in college sports are persistent, substantial and fundamental. It continues to be true in most major programs that basketball and football players are among the worst students on campus. It is not unusual to find that the median SAT scores for basketball and football players are hundreds of points below those for the general student body. Moreover, while improper payments to athletes appear to have abated from the frenzied level of a few years ago, the practice has not disappeared, as recent investigations have revealed.

It is not surprising that the crisis in intercollegiate sports continues. The fact of the matter is that the economic environment that produced academic and financial improprieties in the past has not substantially changed. The teams that win the most continue to earn the most in college sports. Adherence to rigorous admissions and academic standards is an impediment to winning, and a college that seeks to provide its athletes with a serious academic endeavor runs the risk that its competitors will not. The commercial rewards of athletic success continue to be juxtaposed to rigorous academic pursuits.

The time has come to recognize that intercollegiate

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athletics poses a major governance problem for American colleges and universities. Athletics is no longer merely an interesting extracurricular activity that occupies the campus on Saturday afternoon. In major programs, athletics often functions as an auxiliary enterprise that generates its own substantial revenues. On many campuses this has led to a suggestion that the intercollegiate athletic program should not be subject to the same governance structure as are more traditional educational endeavors. Moreover, policy-making in athletics is greatly affected by decisions that are made far from campus. These include decisions made in the National Collegiate Athletic Association (NCAA), by competing institutions, and by the broadcasters that are providing the revenues that have financed the recent expansion of college sports.

Recent experience has shown that the athletic department should not be allowed to function as a separate entity. Such an arrangement ignores the important implications that athletics has for the college's educational program, including the potential for skewing the allocation of institutional resources and impeding the educational development of athletes. Despite the substantial amounts of money earned in athletics at some colleges and universities, almost none is used to support academic programs. Indeed, academic programs are often threatened, but seldom benefited, by changes in the fortunes of the athletic program. The impulse toward separateness of the athletic department needs to be curbed. The goal of structural reform in the governance of college sports should be more fully to integrate athletics into the educational mission of the institution.

The policy statement that follows addresses the general allocation of authority in the governance of athletics. This statement is undertaken with a realistic view of the prospects for college sports reform. It is doubtful that faculty efforts alone will be sufficient to refocus the priorities of major athletics programs. On the other hand, faculties are in a unique position to advocate adherence to meaningful academic standards. Faculties, able to speak with independence and candor, can add important balance to the discussion of reform.

The statement emphasizes the obligation of faculty in ensuring academic primacy in an institution's athletics programs. An essential message is that the faculty has primary responsibility for ensuring the educational integrity of the student's academic experience. In addition, the faculty has a vital role to play in assessing the educational and budgetary implications of decisions concerning the scope of the athletic program. This statement addresses how responsibility for policy-making on athletics should be allocated between the faculty and other components of the university.

I. General Principles

The basic framework for defining faculty responsibility in the governance of athletics is found in an earlier statement of Association policy. The 1966 *Statement on Government of Colleges and Universities* (jointly formulated by the American Association of University Professors, the American Council on Education, and the Association of Governing Boards of Universities and Colleges) underscores the need for joint participation in governance by the various constituencies within the university:

> The variety and complexity of the tasks performed by institutions of higher education produce an inescapable interdependence among governing board, administration, faculty, students, and others. The relationship calls for adequate communication among these components, and full opportunity for appropriate joint planning and effort.

The *Statement on Government* recognizes that the faculty has primary responsibility with respect to fundamental areas of educational policy, and that the faculty, along with other components, should participate in the exchange of information that accompanies long-range planning.

The derivative 1972 *Statement on the Role of the Faculty in Budgetary and Salary Matters* elaborates on the faculty's joint participation in a university's internal budgetary process. An important premise of that statement is that budgetary matters are an appropriate faculty concern:

> The faculty should participate both in the preparation of the total institutional budget, and (within the framework of the total budget) in decisions relevant to the further apportioning of its specific fiscal divisions.

Both statements provide that the authority for final decision making is to be allocated among the governing boards, the president, and the faculty consistent with the responsibility that each component appropriately claims within the overall governance structure. Even where primary responsibility rests with one component, the other affected parties may have a legitimate participatory role.

A. *The Importance of Full Disclosure of Information About the Athletic Program*

In the past, the governance of athletics has been made more difficult because administrators and others have treated information about the athletic program as highly secret. Often, information critical of admission policies, the educational experience of athletes, and financial arrangements with coaches and booster clubs is revealed only as a result of scrutiny by outside agencies, such as the press or the NCAA. Such secretiveness is unacceptable in an intellectual environment that is committed to fostering open and candid discussion. It is also antithetical to effective governance.

For the future, the presumption must be that all aspects of the operation of the athletic department, including the education of athletes and the finances of booster clubs, are open to scrutiny with the university community. A special effort should be made to ensure the confidentiality of information where that is needed to protect the privacy of individual athletes and employees. In general, however, policies with respect to athletics should be subject to the same openness of debate that attends other financial and educational issues within the academic community.

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B. *The Primacy of Faculty Responsibility for the Athlete's Educational Experience*

The faculty has primary responsibility for those aspects of an athlete's experience that involve education. Thus, it is the faculty's duty to ensure that the athlete has a full opportunity to participate in the educational process and that a proper balance is achieved between the athletic and educational experiences. Especially in the present era of intensive, highly commercialized college sports, there are often pressures within the athletic program that draw athletes away from the type of preparation, review, and class attendance that are fundamental to a meaningful education. The faculty has the primary obligation to ensure that pressures are tempered and that athletes have adequate opportunity to pursue educational goals. Review of faculty decisions in this area may be allocated to other governing components, but that review is to be exercised with appropriate regard for the primacy of the faculty's role.

C. *The Faculty's Role in Policy-Making in Other Aspects of the Athletic Program*

A variety of other issues involving athletic policy have a substantial administrative component and thus come within the range of authority of other units of the university. Almost all of these, however, may have important educational implications and thus are legitimately of concern to the faculty. Among the matters warranting attention are questions such as the level of competition at which the university will participate and more specific questions concerning length of playing seasons and policies with respect to team travel. A decision to move to a higher level of competition, for example, will often mean that athletes face increased pressures on their academic schedules. In the same vein, long playing seasons present a significant barrier to regular class attendance. Because of their mixed educational and administrative character, such issues of athletic policy will call for joint participation by faculty, administration, and, where appropriate, other components of the university.

In addition to its particular concerns about the impact of athletics on educational programs, the faculty has a shared interest in planning for the long-range development of the university. The faculty should also play an appropriate role in decisions about the allocation of resources within the university. Policy-making with respect to athletics affects both of these governance functions and thus the faculty is properly involved.

Faculty input is particularly important with respect to the budgetary deliberations undertaken in connection with the athletic program, even with the understanding that ultimate budgetary authority may reside in another body. The allocation of money to and within the athletic program can be a direct determinant of the level of competition that is pursued and hence greatly influences the degree of nonacademic pressure that participants experience. In addition, athletics increasingly involves major resource allocation decisions that should properly be viewed in the context of more general institutional needs and goals. A mechanism should exist for sufficient faculty participation in the budgetary decisions that determine the overall size and scope of the athletic program.

D. *The Institution's Relationship with Outside Regulatory Bodies*

Outside regulatory bodies, such as the NCAA and athletic conferences, play an important role in establishing policies that affect the internal functioning of a university's athletic programs. An individual institution's limited influence over such external entities requires special attention in the institution's internal governance structure. The coordination and execution of a university's participation is properly a function of the president or chancellor. On the other hand, the legislative deliberations of the outside body will frequently affect areas over which the faculty has primary internal responsibility.

Each institution should develop mechanisms that recognize the role of the chief executive officer in speaking for the institution, but which also afford an opportunity for faculty participation in the formulation of the institution's response. Consistent with the principles set forth above, responsibility in this area will typically be shared with other components of the university, with the weight given to the faculty's voice dependent on the particular issues and the degree of the faculty's responsibility in the area of concern.

II. The Mechanisms for Faculty Participation

A. *Oversight of the Educational Experiences of Athletes*

The importance of the faculty's role in defining and monitoring the educational experiences of athletes cannot be overstated. A candid appraisal of major intercollegiate athletic programs will reveal that the internal incentives for educational achievement are modest at best. Refinement of the athlete's physical talents requires a commitment of time and a level of attention that can easily become all-consuming. External pressures in athletic programs on coaches often lead to demands that encourage, rather than temper, the heavy emphasis on athletic preparation.

There is ample evidence of the abuses that can result. In some instances, coaches have effectively made admissions decisions with respect to athletes, typically without particular regard for the institution's normal admissions standards. Another area of persistent abuse has been special programs for tutoring and counseling athletes. Too often counseling on course selection has concentrated on maintaining the athlete's eligibility rather than providing a coherent educational program. Requests for favoritism in evaluating an athlete's course performance have been common and persistent.

The faculty must reassert its primary responsibility in monitoring the educational experiences of athletes. The candid goal of this endeavor should be to counterbalance the pressures in college sports that would subvert the athlete's educational effort. Such balance can be achieved only by removing all decision making that relates to academic matters from the commercial incentives that otherwise affect the daily functioning of the athletic department.

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Several specific areas warrant faculty attention. These include admissions standards for athletes, where the goal should be to ensure that the educational talents of athletes meet the requirement of the general student body. In addition, programs for tutoring and instruction in study skills should be the same as those offered to non-athletes. Whatever attention may be given to the special needs of athletes, the goal should be to promote the athlete's fuller integration into the student body.

The faculty should also give special attention to ensuring that the athlete's individual curriculum has coherency and reflects normal progress through a recognized degree program. The temptation to elevate maintenance of the athlete's eligibility over substantive academic achievement should specifically be resisted. Because of the uncertainty and changes that can attend any student's movement through the university, ensuring that there is substance to the athlete's educational program will be a particular challenge. However, the goal of the faculty's endeavor in this area is clear: to temper the effects of athletic participation on the student's educational choices.

The mechanisms for faculty monitoring are already in place in many institutions. These take the form of committees and offices that set general academic policy and provide oversight. The issues raised are often of importance to the administration, and it is appropriate that the faculty's primary responsibility in this area be carried out through a structure that utilizes existing administrative entities and involves appropriate administrative participation. As with every faculty function, the goal of the governing entities in this area is to ensure that relevant information is adequate and that participation is sought from all affected parties.

Coordination of the faculty's role in these endeavors can appropriately be the responsibility of the representative faculty senate or assembly. To the extent that there is a need for a distinctive faculty voice on such educational issues, the faculty senate or assembly is the appropriate body to provide it.

In some situations, the faculty will find it necessary to use carefully structured *ad hoc* inquiries to fulfill its monitoring function. Periodic audits of the athletes' educational experiences will often be appropriate.

B. *Institutional Policy-Making on Athletics*

An internal forum should be available in which the various components of the university, including the faculty, jointly deliberate the formulation of athletic policy. A university-level athletic committee with representation from those with applicable governance authority would be appropriate. Because of the high degree of faculty responsibility for many of the issues presented, the faculty representation on such a body should be substantial.

An issue of particular importance is the method for selecting the faculty participants. The selection should be undertaken with a view to ensuring the independence of the faculty voice and thus direct election by the general faculty or its elected governing body is preferable. Such direct election will also serve to define lines of responsibility within the faculty.

The faculty's involvement in the joint policy-making body should be undertaken in furtherance of a governance role that includes heightened responsibility for many of the matters under consideration. Thus, the function of the body is to be more than advisory.

A broad range of matters would be expected to come before such a body. The degree of finality to be accorded to such joint deliberations will be determined by the allocation of responsibility among the various governing components. Because of the mixed nature of many athletics issues, however, the joint deliberative body will often be the most appropriate device for resolving issues that overlap the primary responsibilities of the participating entities. In these instances, its deliberations should carry a presumption of finality.

C. *Policy-Making by Outside Bodies*

Because of the significant internal effects of rule-making by external associations, a university should take steps to ensure that its voice is heard in whatever deliberations accompany the external decision making. Once the institution has formulated its positions on important issues, the president or chancellor or other designated representatives should be able to present the institution's position as a unified one.

A structure should be established to allow participation by internal components, including faculty, so that the institution's positions are carefully and thoroughly developed before they are advocated to the external body. As with internal governance, the degree of faculty responsibility will vary depending on the nature of the policy in question. The faculty's responsibility, and hence its interest, will be highest with respect to those regulations that have the most significant implications for the educational experiences of athletes. The faculty perspective is also important for issues that have major budgetary implications and those that define the level of importance assigned to athletics within the institution. The same university-level committee that decides internal athletics policy may prove the appropriate vehicle for faculty participation. On matters of significant educational importance, full deliberation by the elected faculty senate or assembly may be necessary.

In external organizations that invite the participation of a faculty representative, the person so designated should enjoy the support of the faculty. The importance of the university's speaking with unity suggests that the representative must also have the support of the administration. The goal of mutual acceptance is satisfied by a selection technique that provides for the designation of the faculty representative by the chief administrative officer with the advice and consent of the faculty as expressed through its faculty senate or other representative body.

III. Conclusion

The faculty authority to establish and maintain general academic standards entails faculty responsibility to assure specific application of these standards in the education of student athletes.

92

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The faculty is responsible for reviewing academic programs for student athletes. The faculty must assure the primacy of academic concerns in athletics as well as other student programs. Protection of academic integrity against misplaced internal priorities or external demands in athletics programs, as in other matters, is the essential reason for the faculty's role in institutional governance.

The specific procedural concerns delineated in the body of this report require application and elaboration appropriate to circumstances. The overriding principle, however, is that responsibility for the academic welfare of student athletes is not an extra-curricular or departmental obligation of a few faculty members and administrators; it is a fundamental responsibility of the faculty as a whole.

The Special Committee on Athletics
JOHN C. WEISTART (Law),
Duke University, *chair*
LONNIE D. KLIEVER (Religious Studies),
Southern Methodist University
HENRY L. MASON (Political Science),
Tulane University

A Dissenting Opinion

The above report declares, quite truly, that the problems of college sports are "substantial and fundamental." This presents the Association with an opportunity to take the lead (which no other organization has done) in calling for truly "substantial and fundamental" reforms. If we were to do that, we would be making a major contribution to academic integrity. By calling for major reforms, we would position the AAUP as an organization in the lead of the education community on an issue of great importance.

The report approved by a majority of the committee enunciates some worthwhile principles of faculty participation in the governance of athletics, which would be highly useful, if fundamental reform were to occur. It calls for faculty primacy in controlling educational standards with respect to athletes. It urges faculty participation in other aspects of athletic administration. But the report itself concedes that such faculty efforts would, by themselves, not "be sufficient to refocus the priorities of major athletic programs."

It is unlikely that faculty members on individual campuses would or could have a great deal of influence, until the basic system changes. Under this system, costs are high. Not every college can win, and losing on the field causes financial losses. These losses are in one way or another absorbed out of funds that might have served academic purposes. As long as a losing season brings huge financial losses, administrative offices are pressured to go along with or wink at what will win. Frequently, winning policies are dishonest academically and in other ways as well.

Those faculty members who are appointed to the committees dealing with athletics are under pressure to allow whatever policies will make their team competitive, as long as rival teams at other colleges are doing the same. That is why it is difficult to attack this problem by faculty initiative on a campus-by-campus basis. Leadership has to come from the national level if there is to be change.

The Association should appoint a committee to prepare suggestions for fundamental reform. Among the measures considered should be ineligibility for freshmen, shorter practices and seasons, an end to recruiting, to athletic scholarships, and to lower admissions standards for athletes. We should explore what can be done to further the establishment of professional minor leagues, which would afford athletes who lack academic interests or talents an alternative route to an athletic career. The new committee should also be asked to take a close look at the financial implications of the current system, investigating whether college sports do "make money," and if so, where and for whom and for what.

Finally, the new committee should address the issue of whether, under cover of giving a few black athletes a "chance at college they would not otherwise have," the current athletics system covers up the lag in bringing to campus disadvantaged black students who are interested in an education and could benefit from it.

BARBARA R. BERGMANN (Economics),
American University
Member of Special Committee on Athletics

D-93
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APPENDIX E

1991 NCAA Annual Convention Legislation

1991 NCAA CONVENTION
JANUARY 7-11, 1991--NASHVILLE, TENNESSEE

HIGHLIGHTS OF ADOPTED LEGISLATION

INTEGRATION OF STUDENT-ATHLETES INTO STUDENT LIFE

• Eliminates athletic dormitories (which includes wings or floors of a dormitory where at least 50 percent of the residents are student-athletes) and allows an institution to provide student-athletes with only one training-table meal per day.

The objective of each of these new rules is to encourage the integration of the student-athlete into the student body. They do not take effect until August 1996 to allow institutions sufficient time to adjust, as well as to fulfill recruiting commitments made to currently enrolled or entering student-athletes.

REDUCING TIME DEMANDS ON STUDENT-ATHLETES

• Reduces the length of the playing season for team sports other than football and basketball from 26 to 22 weeks and for individual sports to 24 weeks.

• Limits a student-athlete's participation in "athletically related activities" to 4 hours per day and 20 hours per week during the season, and 8 hours per week during the off-season; requires that student-athletes get one day off per week; requires that practice and games not interfere with a student-athlete's class time.

• Reduces the maximum numbers of contests or dates of competition in all sports except football, and reduces the maximum number of contests or dates of competition in basketball, effective with the 1992-93 season, from 28 to 27 instead of 28 to 25 as adopted at the 1990 Convention.

• Prohibits student-athletes from competing on outside teams during the academic year in all sports other than basketball.

• Extends the current summer practice prohibition to all team and individual sports.

Recent NCAA-authorized studies have revealed that student-athletes want a reduction in the amount of time they spend on athletics activities. This legislation will reduce the amount of required time student-athletes spend on athletically related activities, enable them to spend more time on academics, and allow them to enjoy a more complete college experience. It is responsive to the desires of the student-athletes but flexible enough to permit intense preparation for high-level athletics competition.

COST CONTAINMENT

• Reduces the number of permissable grants-in-aid in Division I sports by 10%, with a graduated, three-year reduction in Division I-A football, and a graduated, two-year reduction in Division I basketball.

• Reduces the number of coaches associated with most sports at Division I institutions by at least one full-time equivalent position, effective August 1993. For example, in I-A football, limits the number of head or assistant coaches to 9, and restricted earnings coaches (restricted to earning a maximum of $16,000 per year from the institution) to 4. In I-AA, limits the number of head or assistant coaches to 7, and restricted earnings coaches to 2.

The largest expense item in the athletics budget is personnel. Currently, only football and basketball have limits on the number of coaches who may be employed, and the existing categorical designations of part-time graduate student and volunteer coach have not been effective in reducing the number of full-time paid employees associated with the sport. In addition, there has been a recent proliferation of part-time personnel associated with many Division I sports. Limitations reflect an effort to (1) reduce the number of coaches associated with each sport by at least one (2) establish an "unrestricted" head or assistant coach category that will accommodate any type of volunteer, paid, full-time or part-time coach, and (3) establish a "restricted-earnings" category that will encourage the development of new coaches while more effectively limiting compensation to such coaches.

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• Places limitations on the number of athletic staff members in all sports at Division I institutions who can contact and/or evaluate prospective student-athletes off campus.

This legislation will reduce costs and, at the same time, allow coaching staff members to remain at home during examination periods and other key periods during the academic year. In the sport of football, each staff member who may recruit off campus would be designated prior to the beginning of each academic year. As a result, football coaches could perform duties in other areas (e.g., strength and conditioning, academic support) that otherwise might require additional staff members. In sports other than football, more flexibility is necessary inasmuch as there are fewer coaching positions in those sports. Also, limitations in sports other than football and basketball would be established for the first time. In general, these sports' recruiting efforts are determined more by budgetary restrictions than by efforts to "keep up with the Joneses"; however, such restrictions (especially in the sports that provide fewer financial aid grants) should result in cost savings for the institution.

• Limits regular-season team travel to prohibit team departure earlier than 48 hours prior to competition and to limit to 36 hours the time period an institution may remain in the area after the competition (except to or from Alaska or Hawaii), or travel that occurs during the institution's official vacation period.

Imposing a departure restriction prior to competition and further reducing the number of hours permitted at an away-from-home site after a contest will save travel costs and decrease the number of missed classes.

• Prohibits institutions from providing recruiting materials to a prospect until the beginning of the prospect's junior year in high school; restricts institutions to producing only one publication per sport; prohibits sending greeting cards, special postcards or highlight films to a prospect; in Division I only, restricts printing on institutional stationery and press releases to one color of printing, and prohibits personalized recruiting videotapes or audio tapes; and limits institutions to producing 1 generic all-sports recruiting videotape per year, with a maximum of 3 minutes related to each sport.

The new rules restricting recruiting materials would reduce both printing and mailing costs. The savings in this area for some institutions would be substantial. Recruiting brochures and media guides are expensive, both to produce and to circulate. Excess has been the rule (rather than the exception) in the area of recruiting, particularly in terms of greeting cards, birthday cards and multicolored single-sport cards. It also is common for stationary and standard press releases utilized for recruiting to include four-color photographs and two-color and four-color text. In addition, in recent years, there has been a proliferation of single-sport recruiting videotapes, as well as videotapes personalized for a particular prospect. This legislation should bring more common sense to recruiting, resulting in savings for the institution and also eliminating the pressure for institutions not currently engaged in such practices to begin using such recruiting materials in order to remain competitive with other institutions.

• Prohibits an institution from making telephone calls to or having off-campus contact with a prospect (or the prospect's parents or legal guardians) prior to July 1 following the completion of the prospect's junior year in high school; limits telephone calls to a prospect to one call per week; prohibits students and student-athletes from making telephone calls for purposes of recruitment; and prohibits telephone calls to a prospect (or the prospect's parents or legal guardians) during an institution's intercollegiate athletics contest.

Telephone calls for recruiting have burgeoned and have become expensive and time-consuming. The new restrictions are reasonable and modest. They reduce time pressures on coaches, student-athletes, and prospects and their parents.

• Limits the number of prospect evaluations a coach can make during the academic year to 6; specifies that staff members shall not visit a prospect's educational institution on more than one calendar day during the May evaluation period in football; restricts institutions to a limit of 3 off-campus recruiting contacts with a prospect at any site; allows institutional staff members to visit a prospect's educational institution on not more than one occasion during a particular week.

Current recruiting rules permit as many as 14 in-person, off-campus contacts in the sport of football and 6 in other sports. Also, in football and basketball, the number of visits an institution's coaches may make to a high school during an evaluation period is not limited. Reducing the numbers of contacts, evaluations and observations could significantly reduce recruiting costs and pressures and permit institutional staff members to spend more time on campus working with current student-athletes.

* Reduces from 85 to 70 the total number of paid visits that Division I-A and I-AA institutions may provide prospective student-athletes annually in football, and reduces from 18 to 15 the total number of paid visits that a Division I institution may provide prospective student-athletes annually in basketball.

Many institutions do not approach the current recruiting limitations on official visits, and the new limitations remain high enough to accommodate the concerns of those institutions that bring larger numbers of prospects to campus for official visits.

ACADEMICS

* Requires all Division I institutions to make academic counseling and tutoring services available to all recruited student-athletes.

An institution that recruits a student-athlete owes that individual the opportunity to receive a comprehensive educational experience. This legislation will require that as a minimum standard, the institution make academic counseling and tutoring services available to such recruits in order to maximize the academic performances of student-athletes. Currently, institutions are required to provide such services to scholarship athletes only.

* Requires Division I institutions to conduct exit interviews with a sample of student-athletes after their eligibility expires.

* Requires student-athletes entering their fourth or subsequent year of enrollment at a Division I institution to have completed successfully at least 50% of the course requirements in the student's specific degree program.

COACHES

* Prohibits any Division I or II coach from being involved at any time as a coach, official or in any other capacity on any outside team that includes any student-athlete with eligibility remaining from that institution's team in that sport, except for Pan American, Olympic, national governing body national team, and officially recognized state and national multisport events sanctioned by the NCAA Council, and foreign tours.

* Specifies that only Division I coaches who have been certified by the NCAA on an annual basis may contact or evaluate prospective student-athletes off campus, effective August 1992.

It is important for each institution to assure that recruiting rules and regulations are being understood and followed by their coaches and institutional staff members who are permitted to recruit off campus. Often, an institution will hire a coach or staff member who has little or no college coaching experience and whose knowledge of NCAA recruiting rules is lacking. A certification program would assure each institution that its recruiters have a sufficient understanding of NCAA recruiting rules before they are permitted to recruit off campus, while encouraging a uniform application of these rules.

HIGHLIGHTS OF THE "STATE OF THE ASSOCIATION" SPEECH BY EXECUTIVE DIRECTOR RICHARD SCHULTZ

* Urged support for continued reform since others less qualified are waiting in the wings to take over the control of the NCAA. He stressed the importance of changing the perception of college athletics held by the general public and Congress, which is currently considering legislation to regulate intercollegiate athletics, thus limiting the powers of the NCAA. He urges the entire membership to "act on what is best for the whole of college athletics, rather than what may be desired by any of its parts."

* Recommends that, in order to properly address reform dealing with the financing of athletics, athletic departments be funded like any other institutional department. While the athletic department should be encouraged to maximize external revenues, it should be assured of institutional funding to cover any shortfalls, and likewise, put any profits back into the general fund.

* Reiterates the need for continued reform of the legislative process, to deregulate the writing of specific details of rules approved by the entire membership, and to simplify the recruiting rules as well as the entire NCAA rule book. He also recommends that all legislation be flexible enough to accommodate valid exceptions.

* Proposes that a thorough review of the enforcement process be conducted to ensure that due process is guaranteed, that penalities are consistent and judged to be appropriate to the infraction commited, and to reduce the time needed to complete the investigation. Encourages all members to be supportive of the enforcement staff and the infractions committee.

* States that the number one responsibility of member institutions is to educate student-athletes and provide them with good, well-balanced programs. He also believes that institutions should provide programs which can serve the needs of the elite and pre-professional athletes.

* Informs about a special 3-day training program conducted by the Betty Ford Center for staff of member institutions (at no cost to the institution) to help them better understand the problems surrounding alcohol and substance abuse, and to offer some solutions to successful rehabilitation.

* States the availability of catastrophic medical insurance (at no cost to the institution), as of August 1991, and the availiability of disability insurance for elite athletes (potential first round basketball and first and second round football draftees).

* Urges institutions to reevaluate their locker room access policies to assure equal opportunity for men and women reporters.

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